

CHRISTINA GONZAGA (CSBN # 221187)  
LAW OFFICES OF JAMES S. KNOPF  
1840 Gateway Drive, Suite 200, San Mateo, CA 94404  
Telephone: (650) 627-9595  
Facsimile: (888) 715-9583

Attorney for  
VEDATECH INC. and VEDATECH, K.K

MANI SUBRAMANIAN (PRO PER)  
c/o LAW OFFICES OF JAMES S. KNOPF  
1840 Gateway Drive, Suite 200, San Mateo, CA 94404  
Telephone: (650) 627-9595  
Facsimile: (888) 715-9583

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
(SAN JOSE DIVISION)**

QAD INC., a Delaware corporation, and QAD  
JAPAN K.K., a Japanese corporation,

Plaintiffs,

v.

MANI SUBRAMANIAN, an individual,  
VEDATECH INCORPORATED, a  
Washington corporation, and DOES 1 through  
50, inclusive

Defendants

**Consolidated with:**

VEDATECH K.K., a Japanese corporation;  
MANI SUBRAMANIAN, an individual,

Plaintiffs and Counterdefendants

v.

QAD INC., a Delaware Corporation; QAD  
Japan K.K., a Japanese corporation, QAD  
Japan Inc., a Delaware Corporation; ARTHUR  
ANDERSEN LLP a limited partnership located  
in California JOHN DOORDAN, an  
individual; LAI FOON LEE, an individual;  
NOMURA RESEARCH HONG KONG  
Limited, a Hong Kong Company, NOMURA  
RESEARCH LTD, a Japanese corporation, and  
ISAO Takatori, an individual

Defendants and counterclaimants

**Case No.**

**NOTICE OF REMOVAL  
28 U.S.C. § 1446**

Filing Date: May 04, 2004

From the Superior Court for the State of  
California, Santa Clara County,  
their Case Nos. CV 771638 (+ CV 784685 as  
consolidated into the lead case CV 771638)

**DEMAND FOR JURY TRIAL**

1 [NOTICE OF REMOVAL] PLEASE TAKE NOTICE THAT defendants Mani  
2 Subramanian, Vedatech Inc. and Vedatech K.K.,<sup>1</sup> pursuant to 28 U.S.C. § 1446, hereby  
3 remove the above entitled action, CV 771638 in its entirety (including the consolidated  
4 action CV 784685 which was consolidated *into* the lead case CV 771638 for all purposes  
5 including trial on December 17, 2001 [see generally Exhibit-C, and in particular, pp.19-  
6 20 thereof],) from the Superior Court for the State of California, County of Santa Clara,  
7 to the United States District Court for the Northern District of California.  
8

9 **DOCUMENTS TO BE FILED IN SUPPORT OF THIS NOTICE OF REMOVAL**

10 This Notice of Removal is supported by Exhibits to be filed as soon as possible:

- 11 **EXHIBIT A:** **Legal Brief** outlining points and authorities in support of the  
12 Notice of Removal <to be filed later as necessary>;  
13 **EXHIBIT B:** Copy of **Processes, Pleadings, and Orders** served on the  
14 defendants as required by 28 U.S.C § 1446(a);  
15 **EXHIBIT C:** Evidence of State Court actions regarding **Consolidation** of the  
16 second case CV 784685 into the first LEAD case CV 771638;  
17 **EXHIBIT D:** Evidence of efforts by Defendants to get **information regarding**  
18 the **Complaint through demurrers** in State Court;  
19 **EXHIBIT E:** Chronology of efforts to get **information about the Complaint**  
20 **through Interrogatories**;  
21 **EXHIBIT F:** Chronology of efforts to get **information about the Complaint**  
22 **through Demands for Inspection /Production of Documents**;  
23 **EXHIBIT G:** **Miscellaneous Documents** and other supporting material;  
24 **EXHIBIT H:** **Documents** relating to prior removal of this case.  
25

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26  
27 <sup>1</sup> Vedatech K.K. in the consolidated case should be considered properly as a  
28 defendant as explained below in the section regarding realignment of the parties.

1 **ORIGINAL CASE No. CV 771638**

2 1. The original Complaint in this action is to be found at Exhibit B, Tab-1  
3 attached to this Notice of Removal. This document shall be referred to herein as the  
4 “COMPLAINT” or “Complaint”. **[Please note that the first few pages of Exhibit B, at**  
5 **Tab-1 are the summons, and the Complaint follows in Exhibit B itself within Tab-1.]**

6 2. On January 26 1998, Plaintiffs in this action, QAD Inc., a Delaware  
7 corporation and QAD Japan K.K. a Japanese corporation, filed their complaint in this  
8 action captioned QAD Inc. and QAD Japan K.K. v. Mani Subramanian, Vedatech Inc.  
9 and DOES 1 through 50 as CV 771638 in the Superior Court. (Exhibit B, Tab-1, p.1.)

10 **The PARTIES to the original case CV 771638 (the LEAD Case)**

11 3. Plaintiff QAD Inc. is a Delaware corporation with principal place of  
12 business in Carpinteria, California. (Complaint at Exhibit B, Tab-1, ¶1 @ p.2, lines 3-6.)

13 4. Plaintiffs QAD Japan K.K. is a Japanese corporation with principal place  
14 of business in Yokohama, Japan. (Complaint at Exhibit B, Tab-1, ¶2 @ p.2, lines 11-15.)

15 5. Defendant Subramanian is a United States citizen and a resident of the  
16 State of Washington.<sup>2</sup>

17 6. Defendant Vedatech Inc. is a Washington State Corporation with principal  
18 place of business in the State of Washington. (Exhibit B, Tab-1, ¶4 @ p.2 lines 24-28.)

19 7. Defendant Vedatech K.K. is a Japanese corporation with its principal  
20 place of business in Yokohama, Japan. (see footnote 1 above regarding the status of  
21 Vedatech K.K. as a defendant and the need for realignment of the parties.)

22  
23 <sup>2</sup> QAD Parties, in their Complaint filed in Jan 1998 “allege[ ], that  
24 SUBRAMANIAN currently resides in the country of Japan,  
25 but that he makes, and at various times relevant to  
26 the matters set forth in this action has made,  
27 repeated trips to the State of California in  
28 connection with the matters set forth herein and for  
other purposes.” (Complaint at Exhibit B, Tab-1, ¶3 @ p.2, lines 17-22.)

1           **Initial Progress of this LEAD Case**

2           8.       Vedatech Inc. was served in June 1998. Subramanian was never served  
3 formally but stipulated to a waiver of process in April 2000.

4           9.       Vedatech Inc., removed this case on the basis of complete diversity in  
5 June 1998 to the Federal District Court in San Jose, where it proceeded as C-98-cv-20792  
6 SW. (Removal papers at Exhibit B, Tab-5.)

7           10.      Defendant Vedatech Inc. applied for dismissal on the basis of lack of  
8 personal jurisdiction. This order was denied in Mar 2000. (Order at Exhibit B, Tab-11.)

9           **Tender to the insurance company St.Paul**

10          11.      Vedatech Inc. tendered defense of these claims to St.Paul Fire and Marine  
11 Insurance company (St.Paul) in early 1999.<sup>3</sup> St.Paul, rather than defend the case, chose  
12 to do a severe “reservation of rights”, and instead offered to partially pay for attorneys  
13 already chosen or employed independently by Vedatech Inc and/or Subramanian.

14          **Relevance of the insurer St.Paul**

15          12.      St.Paul, while claiming to be the insurer for Vedatech parties, concurrently  
16 initiated a declaratory action in Feb 2002 in the Superior Court for Santa Clara county as  
17 Case No. 805197. In May 2002, prior attorneys for Vedatech Parties, withdrew from this  
18 QAD action because of non-payment of defense costs by St.Paul. In June 2002,  
19 Subramanian, without the benefit of counsel removed the St.Paul insurance (declaratory  
20 relief) action to Federal Court under Case No. C-02-03061-JF. Vedatech corporate  
21 parties were not represented by counsel at that time, not in the least because of non-  
22 payment of defense costs in the QAD litigation by St.Paul. Subramanian was told  
23 repeatedly in this period (around June/July 2002) by St.Paul’s and QAD’s attorneys that  
24 he could not represent the corporate parties in Court. Thus, Subramanian did not  
25

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26          <sup>3</sup>       The designation “St.Paul” will be used to denote both St.Paul and its wholly  
27 owned subsidiary United States Fidelity and Guaranty Co., both of whom are insurers of  
28 Vedatech Parties.

1 explicitly plead joinder of the Vedatech corporate parties in the Notice of Removal.  
2 Because of that error, in that Vedatech K.K. was not joined, this insurance case [formerly  
3 C-02-03061 JF] was remanded back to the State Court.

4 **CURRENT Removal of the insurance case, CV 805197 to Federal Court**

5 13. On Friday, April 9, 2004, this insurance case was removed on the basis of  
6 federal jurisdiction on grounds related to those outlined here, and assigned Case No. C-  
7 04-01403 SC. A related case Notice has been filed referring to this case and it is hoped  
8 that this insurance case would be transferred to be considered along with this case.  
9

10 **REAL PARTY IN INTEREST – VEDATECH K.K., the Japanese corporation**

11 14. There is attached as an exhibit to the Complaint itself, an agreement  
12 between Vedatech Corporation and QAD Inc., dated March 24, 1994 (in Bali, Indonesia).  
13 (Complaint, Exhibit B of this Amended Notice of Removal, Tab-1, ¶11 @ p.5, lines 15-  
14 22, and “exhibit A” of the Complaint itself after p.21 of the Complaint.) This agreement,  
15 as can be seen clearly from the document itself, is with the Japanese corporation,  
16 “Vedatech Corporation” and signed by Karl Lopker, the CEO of QAD Inc, of California.<sup>4</sup>

17 15. The Japanese corporation, Vedatech Corporation is known in Japanese as  
18 Vedatech Kabushiki Kaisha, also denoted as Vedatech K.K.

19 **Problems with the defense for Vedatech Inc.**

20 16. Vedatech Inc. had asserted in its defense that it was the wrong party to be  
21 sued on the relationship with QAD Inc. On the other hand, QAD Inc., beginning for the  
22 first time in its opposition papers to Vedatech Inc.’s motion for dismissal, alleged an

23 <sup>4</sup> It is true that Vedatech Inc., the Washington State Corporation was initially  
24 incorporated as Vedatech Corporation in March 1994 and in late 1996 changed its name  
25 to Vedatech Inc., to prevent confusion in the names. But QAD Inc. was not belaboring  
26 under any such misapprehension as it sued Vedatech K.K. under its proper legal Japanese  
27 name (Vedatech Kabushiki Kaisha) in Japan in October 1997, well before it initiated  
28 proceedings in California. The choice of Vedatech Inc., the Washington Corporation was  
a clear attempt at forum shopping by QAD Inc, and a strategic / tactical move by QAD.

1 “alter ego” relationship between the Vedatech entities and Subramanian. Thus, if  
2 Vedatech Inc. could not assert the defenses that belonged to Vedatech K.K. but was  
3 exposed to the liabilities of Vedatech K.K. through the alter ego allegations. The only  
4 way out was for Vedatech K.K. to intervene in the action in one way or another.

5 **Problems with Joinder of Vedatech K.K.**

6  
7 17. In mid-1999, when Vedatech Inc. lost its motion for dismissal for lack of  
8 personal jurisdiction, Vedatech K.K. had a choice of (A) applying for intervention in the  
9 ongoing federal case as the true defendant, *or* (B) initiating new proceedings in federal  
10 court and then applying for consolidation and realignment of parties. Several problems  
11 arose at this time that forced the decision not to pursue either of these options.

12 18. The law firm of Bogle and Gates of Seattle, Washington, that was  
13 representing Vedatech Inc., collapsed in 1999 because of the partial takeover of much of  
14 the practice by a rival out-of-state firm Dorsey and Whitney. The firm of Morrison and  
15 Foerster that took over from Bogle and Gates could not continue support for very long  
16 because St.Paul (the insurance company) was not paying the legal costs of the defense in  
17 full. There was also an additional serious concern (mistaken it would seem now) that the  
18 residence of Subramanian in Japan may defeat diversity jurisdiction.

19 **NEW ACTION PERMITTING VEDATECH K.K. TO ASSERT COUNTERCLAIMS**

20 19. For all of these reasons, Vedatech K.K. commenced new proceedings  
21 under Case No. CV 784685 in the Superior Court for Santa Clara County in September  
22 1999. The complaint in these second proceedings shall be referred to as the “VTKK-  
23 Complaint”. (See Original VTKK-Complaint at Exhibit B, Tab-19.) The further  
24 amendments to this complaint (in response to various State Court demurrers by other  
25 parties,) are to be found at, VTKK-First-Amended at Exhibit B, Tab-20, and VTKK-  
26 Second Amended at Exhibit B, Tab-76, and VTKK-Third-Amended at Exhibit B, Tab-  
27 90.

**Third-parties jointly responsible with QAD added to Vedatech K.K.'s claims**

20. In order to properly assert its claims (counterclaims) against QAD Inc. and QAD Japan K.K., Vedatech K.K. joined other parties, all of whom are aligned with QAD Inc. and are either executives of QAD Inc., former executives of QAD Inc., or other parties that worked in collusion with QAD Inc. The identity of these third-party defendants are described below.

**Third-party joint tortfeasor (counterdefendant) QAD Japan Inc.**

21. QAD Japan Inc., is a Delaware corporation with principal place of business in Tokyo, Japan (or Carpinteria, California, if it is considered to be an alter ego of QAD Inc.)

22. QAD Japan Inc. is a decoy company specifically set up in or around August 1997 to steal business away from QAD Japan K.K. by using a name similar to QAD Japan K.K. This company QAD Japan Inc. was used in QAD Inc.'s efforts to force Subramanian to resign from QAD Japan K.K., to starve QAD Japan K.K. of funds and to direct customers away from QAD Japan K.K. and Vedatech K.K.

23. It is believed that QAD Japan K.K. is dormant and QAD Inc. operated (and continues to operate) in Japan now exclusively through this decoy company.

**Third-party joint tortfeasor (counterdefendant) Arthur Andersen**

24. Arthur Andersen LLP is an Illinois partnership with principal place of business in Chicago, Illinois.

**Third-party joint tortfeasor (counterdefendant) John Doordan**

25. John Doordan is an executive of QAD Inc. and a citizen of California.

**Third-party joint tortfeasor (counterdefendant) Lai Foon Lee**

26. Lai Foon Lee, an executive of QAD Inc., and a citizen of California at the time of commencement of the Vedatech K.K. proceedings, is now no longer with QAD Inc., and, from information and belief, is a citizen of Connecticut.

1                   **Third-party joint tortfeasor (counterdefendant) NRI-HKG**

2           27.     Nomura Research Institute, Hong Kong Limited, (“NRI-HKG”) is a Hong  
3 Kong company with principal place of business in Hong Kong, People’s Republic of  
4 China. NRI-HKG was properly served but dismissed by the State Court as a result of  
5 their motion to dismiss for lack of personal jurisdiction.

6                   **Third-party joint tortfeasor (counterdefendant) NRI-JAPAN**

7           28.     Nomura Research Institute Limited, (“NRI-JAPAN”) is a Japanese  
8 corporation with principal place of business in Tokyo, Japan. NRI-JAPAN has not been  
9 served as of this date.

10                   **Third-party joint tortfeasor (counterdefendant) Isao Takatori**

11           29.     Isao Takatori, the former president of NRI-HKG, is a Japanese citizen,  
12 currently believed to be a resident of Japan. Takatori has not been served as of this date.

13                   **Real position of Arthur Andersen**

14           30.     Arthur Andersen LLP, subsequent to their prosecution by the U.S.  
15 government, operates as a shell company with almost no assets and a skeleton operation  
16 out of Chicago. Its participation in the litigation at this point is limited to supporting  
17 QAD’s positions on most matters.

18                   **The nature of Vedatech parties’ claims against these third-parties**

19           31.     Vedatech parties have asserted various defenses and counterclaims against  
20 Plaintiffs QAD Inc. and QAD Japan K.K. It is Vedatech parties’ contention that all of  
21 these third-parties are jointly responsible with QAD Inc. and QAD Japan K.K. for the  
22 matters alleged in the counterclaims against the main QAD parties. None of these third-  
23 parties have asserted any claims against the Vedatech parties. QAD Japan Inc., John  
24 Doordan, and Lai Foon Lee are all represented by the same counsel as QAD Inc., viz. Mr  
25 William Connell. Arthur Andersen LLP’s interests are aligned with that of QAD. NRI-  
26 HKG and NRI-Japan and Takatori are also aligned with QAD Inc.  
27  
28



1 **DECEMBER 1999 REMOVAL OF THE SECOND ACTION TO FEDERAL COURT**

2 32. On December 23, 1999, Mr Connell, attorney for QAD Inc. and QAD  
3 Japan K.K., purportedly acting only on behalf of QAD Japan Inc. (the decoy company)  
4 removed the second action to Federal Court where it proceeded briefly as C-99-21241  
5 SW. (Removal Papers at Exhibit B, Tab-22.)

6 **The “counterclaims” of QAD Inc. and QAD Japan K.K.**

7 33. QAD Inc. and QAD Japan K.K., on Mar 8, 2000, answered in Federal  
8 Court in the second action, CV 784685. (Answer at Exhibit B, Tabs-26,30.) In addition,  
9 QAD Inc. and QAD Japan K.K., the original plaintiffs in the first action, also filed  
10 counterclaims in this second action. These counterclaims of QAD parties are “cut and  
11 pasted” from the claims in the first case, and identical for all practical purposes to their  
12 claims in the original action in CV 771638. (Counterclaims at Exhibit B, Tab-32.) The  
13 important changes are the “alter ego” allegations in id, ¶6 @ p.3, lines 8-28; p.4, lines 1-  
14 8, and the concession that the March 1994 agreement was with Vedatech K.K., albeit  
15 phrased as being with “Vedatech Corporation”, id, ¶11 @ p.5, lines 21-25. QAD Inc. and  
16 QAD Japan K.K. allege in these counterclaims that Vedatech Inc., Vedatech K.K. and  
17 Mani Subramanian are all “alter egos” of each other, “justifying liability of  
18 each, to wit, SUBRAMANIAN, VEDATECH K.K., and Vedatech Incorporated,  
19 for the obligations of the others, id, ¶6 @ p.4, lines 6-8.

20 34. With a minor change in paragraph numbering because of the additional  
21 paragraph with alter-ego allegations, the so-called counterclaims are nothing but QAD  
22 Inc. and QAD Japan K.K.’s original claims in the first (LEAD) case, with the inevitable  
23 acknowledgment through the back door, that they had sued the wrong company, and that  
24 they *should have* sued Vedatech K.K. as the defendant in the first place.

25 **The “first-amended cross-complaint” of QAD Inc. and QAD Japan K.K.**

26 35. In August 2000, Vedatech K.K and Subramanian demurred to the  
27 “counterclaims” of QAD Inc. and QAD Japan K.K. in the second case, CV 784685. In  
28

1 response to this demurrer, QAD Parties amended their “counterclaims” as a matter of  
2 course /right on August 31, 2001. This “First-Amended Cross-Complaint” no longer  
3 named Subramanian as a defendant, since QAD Parties had already asserted all of their  
4 claims against Subramanian in the LEAD case. (see First-Amended Cross-Complaint of  
5 QAD Inc. and QAD Japan K.K. at Exhibit B, Tab-53.)

6 36. It is to be noted that all of this confusion was created primarily because of  
7 QAD’s tactical choice of suing the wrong company, the Washington State affiliate in  
8 order to make it easier for them to have a United States forum (as opposed to Japan).  
9

#### 10 **REMAND OF BOTH ACTIONS BACK TO STATE COURT**

11 37. Partly because of the confusion over the matter of the residence /domicile  
12 of Subramanian, there was a cloud over the diversity jurisdiction for both cases.  
13 Although no Judicial decision was made on the merits of this matter (i.e. no findings of  
14 fact or law relating to this point), because of the concern expressed by the Court about the  
15 unwelcome possibility of proceeding without subject matter jurisdiction, the legal team  
16 for both sides stipulated to a remand of both cases back to State Court. (see Stipulation  
17 and Order regarding Remand at Exhibit B, Tabs-36,37,38.)

#### 18 **CONSOLIDATION OF BOTH CASES IN STATE COURT INTO CV 771638**

19 38. After remand, both sides utilized the State Court procedure of demurrers  
20 to challenge the pleadings of the other side. These demurrers led the Honorable Judge  
21 Rushing, upon the Court’s own motion to issue a show cause order as to why the two  
22 cases should not be consolidated. (see Exhibit D, p.11, lines 22-25; p.12, lines 1-5; p.15,  
23 line 28; p.16, lines 1-15; p.18 first three lines at the top; and ORDER at pp.19-20.) The  
24 Court’s observations clearly set out the reasons why Vedatech Inc. and Vedatech K.K.  
25 are really the true defendants and that “**the liability of each entity individually, and the**  
26 **liability of each for the acts of the other or those of Mr Subramanian, if any, are**  
27 **factual matters to be sorted out by trial on by other factual proceeding.”**  
28

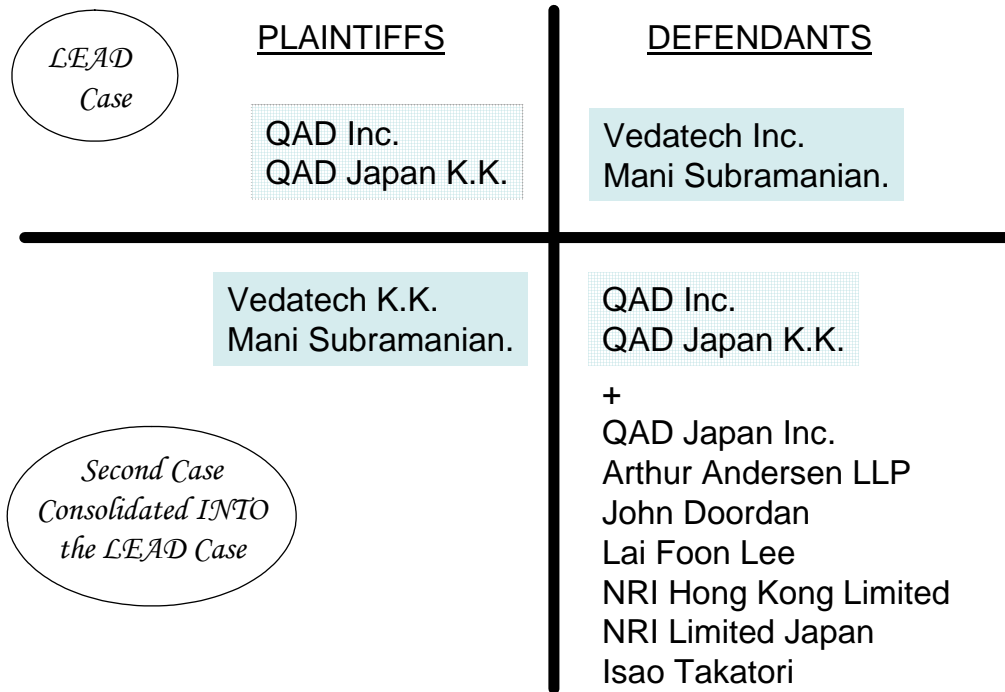
1 **RE-ALIGNMENT OF THE PARTIES**

2 39. As the observation of the Honorable Judge Rushing clearly indicates from  
3 the above references to Exhibit-C, it is clear that QAD Inc. and QAD Japan K.K.  
4 acknowledge that they entered into a contract with Vedatech K.K. (i.e. “Vedatech  
5 Corporation”). Their tactical decision to sue the Washington Corporation Vedatech Inc.  
6 in order to avoid having to litigate this matter in Japan cannot hide the fact that the true  
7 defendant is Vedatech K.K. and was always Vedatech K.K. In addition, QAD premises  
8 its claims on an *alter ego* allegation between Vedatech K.K., Vedatech Inc., and Mani  
9 Subramanian, clearly putting them all on one side of the dispute.

10 40. The parties need to be lined up so that Vedatech Inc., Vedatech K.K. and  
11 Mani Subramanian are on one side as proper defendants to the LEAD case into which the  
12 second case has been consolidated. QAD Inc. and QAD Japan K.K. are the original and  
13 proper plaintiffs. The other parties are third-party defendants that Vedatech parties  
14 brought in to be on the side of QAD and as co-conspirators or joint tortfeasors. All of the  
15 parties named by Vedatech K.K. are adverse to the Vedatech parties and none of them are  
16 adverse to the QAD parties.

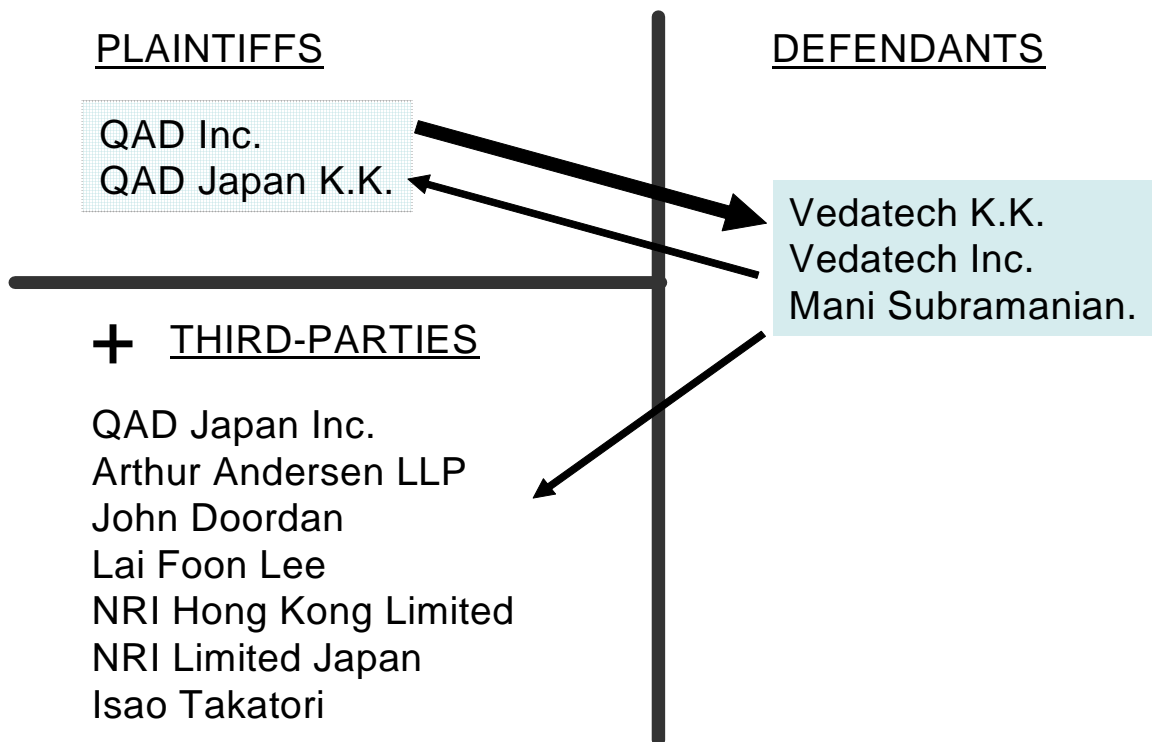
17 41. It is well established the District Court will realign parties before looking  
18 at who the “defendants” are and who the real “plaintiffs” are. At the time of removal  
19 (March 15, 2004), and for some time before that, complete diversity exists between all of  
20 the true defendants (Vedatech Inc., Vedatech K.K. and Mani Subramanian) and all of the  
21 true plaintiffs (QAD Inc., QAD Japan K.K.) and third-parties aligned with QAD (QAD  
22 Japan Inc., John Doordan, Lai Foon Lee, Isao Takatori, Arthur Andersen LLP, NRI-  
23 HKG, and NRI-Japan). Although this removal is not based on that, there is original  
24 jurisdiction in that sense even if the federal claims were to drop off after the  
25 establishment of subject matter jurisdiction on the matter of federal question (e.g. the  
26 post-removal attempts by QAD to defeat federal jurisdiction by dismissing all claims in  
27 collusion with St.Paul the insurer), the Court can still exercise jurisdiction on that basis  
28

42. **THE CURRENT LINE UP OF THE PARTIES IS:**



43. **AFTER REALIGNMENT OF THE PARTIES:**

**TRUE POSITION IN THE CONSOLIDATED CASE**



1 **QAD'S COMPLAINT AND THE ISSUE OF "INTELLECTUAL PROPERTY"**

2 44. Para.7 of the Complaint (and Para.6 of the First-Amended Cross-  
3 Complaint) states the following regarding QAD Inc., (Exhibit B, Tab-1 and Tab-53):

4 The principal business of QAD-USA is the  
5 development and marketing of Enterprise Resource  
6 Planning software for multinational and other  
7 large manufacturing companies.

8 45. Para.8 of the Complaint (and para.7 of the First-Amended Cross-  
9 Complaint) alleges the purpose behind establishing QAD Japan K.K., *id*:

10 [...] QAD-USA has established [...] QAD-Japan  
11 [...] [to assist] QAD in working with local  
12 alliance partners to translate and otherwise  
adapt the software for local use, [...].

13 46. Para.10 of the Complaint (and para.9 of the First-Amended Cross-  
14 Complaint) alleges the role of QAD Japan K.K. to be as follows, *id*:

15 QAD-USA formed QAD-Japan: [...] (2) to supervise  
16 customization efforts by third-parties enabling  
17 Japanese businesses, as well as businesses from  
18 other countries with operations in Japan, to  
19 utilize QAD software; and (3) to undertake  
20 various other functions related to the  
customization, **localization**, and utilization of  
21 QAD software in Japan.<sup>5</sup> QAD-Japan was

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22 <sup>5</sup> The term "localization" is used in the software industry to denote modifying  
23 software to make it specifically tailored to a local market. Although it has come to mean  
24 country-specific translations, (albeit including complex analysis of local market  
25 requirements), Vedatech undertook the tasks of translation, modification (customization),  
26 addition of features and modules, and other adaptations to the QAD software in order to  
27 make it more useful for customers in Japan. For a definition of "localization" not  
28 including the acts of "customization" or "addition of functional modules", please see  
<http://www.lisa.org> [the Localization Industry Standards Association,] or please see  
[http://www.visloc.com/downloads/Softwarelocalization\\_with\\_VisualLocalize.pdf](http://www.visloc.com/downloads/Softwarelocalization_with_VisualLocalize.pdf) or, for  
example the website, [http://www.bowneglobal.com/english/sol\\_ls\\_1.htm](http://www.bowneglobal.com/english/sol_ls_1.htm)

1 established to be the sole licensor of QAD  
2 software source code in Japan and, subject to the  
3 review and approval of QAD-USA, to enter into  
4 relationships with third parties to act as  
5 "Approved Implementation Partners" to distribute  
and support QAD's software products in Japan.

6 47. Para.11 of the Complaint (and para.10 of the First-Amended Cross-  
7 Complaint) of QAD Inc. continues, *id*:

8 [...] QAD-USA entered into a relationship with  
9 defendants VEDATECH ["Vedatech Corporation"] and  
10 SUBRAMANIAN, under which, among other things,  
11 VEDATECH ["Vedatech Corporation"] and SUBRAMANIAN  
12 were to perform various services in connection  
13 with the setting up and initial operation of QAD-  
Japan [...].

14 48. Para.21 of the Complaint (and para.20 of the First-Amended Cross-  
15 Complaint) of QAD Inc. alleges various actions that relate to the issue of the "intellectual  
16 property" and actions alleged to involve such "intellectual property", *id*:

17 [...]

18 (L) On behalf of VEDATECH, improperly asserting  
19 ownership to various intellectual property of QAD  
20 [QAD-USA], including, but not necessarily limited  
21 to, certain computer software, for which QAD  
22 [Cross-Complainants,] at SUBRAMANIAN's direction,  
paid VEDATECH ["Vedatech Corporation"].

23 prior subparagraphs that are related to this allegation regarding intellectual property are:

24  
25 (H)Dissemination of false and misleading  
26 information regarding QAD [Cross-Complainants,  
27 and each of them,] resulting in substantial  
28

1 disruption of QAD's relationships with such  
2 customers and prospective customers;

3 (I) Dissemination of unauthorized invoices, as  
4 well as false and improper instructions, to  
5 various QAD customers [customers of Cross-  
6 Complainants, and each of them,] regarding  
7 payment of QAD Invoices [Invoices from Cross-  
8 Complainants, and each of them,] resulting in  
9 substantial disruption of QAD's [Cross-  
10 Complainants', and each of their,] relationships  
11 with such customers;

12 (J) Improper interference with efforts by duly  
13 authorized QAD [QAD-USA] personnel to participate  
14 in duly authorized activities involving QAD-  
15 Japan;

16 (K) Improper interference with efforts by QAD  
17 [QAD-USA] personnel to provide support to certain  
18 QAD customers [customer of Cross-Complainants,  
19 and each of them,] in order to benefit VEDATECH;  
20 and [...]

21 [...]

## 22 **QAD'S COMPLAINT AND THE ALLEGATIONS REGARDING THE** 23 **CONTRACTUAL RELATIONSHIP BETWEEN THE PARTIES**

24 49. Para.11 of the Complaint (and para.10 of the First-Amended Cross-  
25 Complaint) of QAD Inc. incorporates the attachment (Exh-A of the Complaint / First-  
26 Amended Cross-Complaint itself) into the Complaint and describes the formation of the  
27 contractual relationship as follows, *id*:

28 On or about March 24, 1994, pursuant to an  
agreement containing the terms set forth in  
Exhibit A to this complaint ("March 24, 1994  
agreement") [...]

1           50.     Para.16 of the Complaint (and para.15 of the First-Amended Cross-  
2 Complaint) of QAD Inc. alleges oral extensions of the original March 24, 1994 written  
3 agreement as follows, *id*:

4           [... ] In or about March, 1995, toward the end of  
5 the one-year period set forth in the March 24,  
6 1994 Agreement, QAD-USA, SUBRAMANIAN and VEDATECH  
7 [Vedatech Corporation] mutually determined to  
8 continue the arrangement under which SUBRAMANIAN  
9 served as Representative Director and an interm  
President of QAD-Japan. [... ]

10           51.     Para.19 of the Complaint (and para.18 of the First-Amended Cross-  
11 Complaint) of QAD Inc. alleges termination of the relationship with SUBRAMANIAN  
12 as follows, *id*:

13           [... ] on or about April, 1997, QAD-USA served  
14 VEDATECH [SUBRAMANIAN and "Vedatech Corporation"]  
15 with written notice terminationg QAD-Japan's  
16 relationship with SUBRAMANIAN, effective July 31,  
17 1997. A true and correct copy of this notice is  
18 attached to this complaint [Cross-Complaint] as  
19 Exhibit B and incorporated in full by this  
20 reference. The terms set forth in the notice  
21 were based on, and consistent with, the  
termination provision expressly set forth in the  
March 24, 1994 Agreement.

22           52.     Although the above paragraphs do not allege termination of the March 24,  
23 1994 Agreement itself, this is evident from Exhibit B of the Complaint [Cross-  
24 Complaint] of QAD, which is incorporated by reference into the Complaint [Cross-  
25 Complaint]. Herein the attempted termination by QAD Inc. through the letter written by  
26 John Doordan are set out as follows, *id, Exhibit B of the Complaint [Cross-Complaint]*:



1 [...] On behalf of QAD Inc., and QAD Japan K.K.,  
2 I advise you and the Vedatech group that our  
3 contract of March 24, 1994 is hereby terminated.  
4

5 **QAD'S "PRAYER FOR RELIEF" RELATING TO AND SPECIFIC TO THE**  
6 **ALLEGATIONS REGARDING "INTELLECTUAL PROPERTY"**

7 53. Although all of the relief claimed in one way or another relates to the  
8 allegations regarding the "intellectual property" the more specific of these with respect to  
9 copyright related remedies are alleged in the "Prayer for Relief" sections, (Exhibit B,  
10 Complaint, Tab-1, at pp.20-21, and Exhibit B, First-Amended Cross-Complaint, Tab-53,  
11 at pp.21-23:

12 [...]

13 D. For a temporary restraining order, a preliminary  
14 injunction and a permanent injunction, all of  
15 which enjoin defendants, and each of them, and  
16 their agents, employees, officers, directors, or  
anyone acting under their authority or control:

17 (1) From taking, or continuing to take, any  
18 action that interferes with QAD's right and  
19 ability to access [...] any property  
20 belonging to, on in the name of, QAD-USA or  
21 QAD-Japan, including but not limited to,  
22 **software, equipment**, [...], books and  
records, etc.;

23 (2) [...]

24 (3) From interfering in any manner with efforts  
25 by QAD to obtain payment from past, present,  
26 or potential future customers;

1 (4) To return to QAD-Japan any and all  
2 equipment, property, [...] equipment,  
3 software, etc.;

4 E. For an accounting and restitution of all  
5 amounts by which defendants, and each of  
6 them, have been unjustly enriched;

7 F. For costs of suit incurred herein, including  
8 reasonable attorney's fees as allowed by law;  
9 and,

10 G. For such other and further relief as this Court  
11 deems just and proper.

12 [...]

### 13 **The difficulty with analyzing the “artfully pleaded” QAD Complaint**

14 54. It is not clear from the Complaint whether the “software” that QAD refers  
15 to includes the “localized” or Japanized software which VEDATECH developed for the  
16 Japanese market, based on the original software from QAD, called MFG/PRO  
17 (Para.21(L) [20(:L)] of the Complaint [First-Amended Cross-Complaint] only refer to  
18 “certain computer software”). It is also not clear what QAD means by referring to this as  
19 “property”. It is uncertain when “software” is referred to simply as a “property” or even  
20 “intellectual property”: is it the actual computer on which it might be stored, a storage  
21 device such as a hard disk in which this might be stored, a reel of magnetic tape on which  
22 it might be stored, etc. Thus, QAD avoided having to raise an issue relating to copyrights  
23 (i.e. statutory prescriptions specifically outlining rights and remedies) by artfully pleading  
24 issues relating to the same as “ownership” of the property called “certain software”.  
25 Since QAD bundles these requests with the demand for the return of “equipment” etc,  
26 which presumably are the computers and storage devices that might contain the software  
27  
28

code or modules, it is not entirely clear what the scope of the Complaint is or what issues need to be resolved to provide relief to QAD.

55. It is clear though that the issue of the “computer software” is linked to the matter of the “intellectual property” in para.21(L) [20(L)] of the Complaint [First-Amended Cross-Complaint]. What is not clear is the specific attribute of this “property” that is necessary for the resolution of QAD’s claims and associated remedies demanded by QAD in its Complaint [First-Amended Cross-Complaint].

### **The differences between the Complaint and the First-Amended Cross-Complaint**

56. The only substantive material distinction between the Complaint (Exhibit B, Tab-1,) and the First-Amended Cross-Complaint (Exhibit B, Tab-53,) is that QAD finally admitted that it should have sued Vedatech K.K. the Japanese corporation.<sup>6</sup> Of course, in addition, to overcome the problems caused by its suing the wrong party in the LEAD case, QAD now alleges “alter ego” status between Vedatech Inc., the Washington corporation, Vedatech K.K., the Japanese corporation that it knew it contracted with, and Mani Subramanian, the principal in both of these corporations. Additionally, the Complaint asserts as “Breach of Fiduciary Duty” as the Sixth Cause of action against SUBRAMANIAN (“cut and pasted” into the Counterclaims of QAD dated Mar 2000, Exhibit B, Tab-32.) But the First Amended Cross-Complaint of QAD drops Subramanian as a defendant and substitutes “Breach of Contract” as the Sixth Cause of Action against, it would seem against both Vedatech K.K. and SUBRAMANIAN. This is an admission by QAD that it sued the wrong party in the LEAD case. The “alter ego” allegations in the First Amended Counterclaim ensure that both Vedatech Inc., and

---

<sup>6</sup> As noted earlier, there is certainly an argument that could be made because of the historical name changes in the corporate names for the Washington corporation, but QAD [and Vedatech’s insurer St.Paul for that matter] clearly knew about the Japanese corporation and the correct naming conventions, and its purported reliance on such a confusion is clearly disingenuous and insincere.

Vedatech K.K. are potentially liable on all causes of action. Accordingly, if the realignment of the parties is accomplished as respectfully submitted above, then the First-Amended Cross-Complaint can be treated as the Amended Complaint in the consolidated single action and no other pleadings are necessary. Similarly the pleadings of Vedatech K.K. (called the Third Amended Complaint) are properly treated as Vedatech K.K.'s Third-Amended *Counterclaims*. The role of Subramanian in both cases are merged as there is no material difference between the allegations regarding SUBRAMANIAN in both except for the "alter ego" status alleged in the First Amended Cross-Complaint.

**DIRECT IMPACT OF THE ABOVE ALLEGATIONS REGARDING  
"INTELLECTUAL PROPERTY", ON THE VARIOUS CAUSES OF ACTION  
ALLEGED IN THE COMPLAINT [FIRST-AMENDED CROSS-COMPLAINT]**

57. QAD's Complaint is not well-pleaded. Furthermore, VEDATECH defendants contend that most of what is alleged therein is false. Notwithstanding that, and perhaps because of that, QAD parties have resorted to "artful pleading" and a good dose of fudging in order to state various causes of action in the Complaint [First-Amended Cross-Complaint]. Various facts are clearly alleged with respect to actions regarding unspecified "intellectual property" and the impact of the issues of "intellectual property" on the various causes of action is also stated very clearly:<sup>7</sup> QAD, although the "master of the complaint" has through "artful pleading" fudged the various issues to create an impression of extensive wrongdoing by defendants VEDATECH and SUBRAMANIAN. As alleged in the Complaint and the First-Amended Cross-

---

<sup>7</sup> As detailed below, the subsequent discovery clearly showed the importance to QAD of the issue of the "intellectual property", essentially the ownership of the source code of the "localized" software that was developed by VEDATECH [i.e software based on the QAD's MFG/PRO software but with additions and customizations and translations and "localizations" developed by VEDATECH, the author of such additions and localizations]. VEDATECH claimed and claims copyrights in this software and QAD disputes that. With QAD's clarification for the first time on March 10, 2004 (received on March 11, 2004), the resolution of that dispute has become central to the resolution of the various causes of action in QAD's Complaint [First-Amended Cross-Complaint].

1 Complaint, all of the causes of action to varying degrees of clarity state claims based on  
2 the alleged acts regarding “intellectual property”. A rough ordering of the degree of  
3 inclusion of the issues regarding “intellectual property” is provided below, although  
4 given the vagueness of the allegations, it is sometimes quite hard to pin down what it is  
5 that QAD is alleging: (1) Unfair Competition, (2) Trade Libel / Disparagement of Goods  
6 and Quality, (3) Intentional interference with Contractual Relations, (4) Intentional  
7 Interference with Prospective Economic Advantage, (5) [*Complaint only*] Breach of  
8 Fiduciary Duty (6) [*Amended Cross-Complaint only*] Breach of Contract and (7) Fraud.  
9

#### 10 **THE FIRST CAUSE OF ACTION FOR “FRAUD”**

11 58. Paras.22-24 of the Complaint (paras.21-23 of the First-Amended Cross-  
12 Complaint) of QAD Inc. pleads the cause of action for Fraud. The relevant passages are:

13 22. [21.] Plaintiffs [Cross-Complainants]  
14 reallege and incorporate herein as if set forth  
15 in full the allegations of paragraphs 1 through  
16 **21 [20]**, of this Complaint [these [sic]  
Counterclaims].

17 23. [22.] Plaintiffs [Cross-Complainants] are  
18 informed and believe, and thereon allege, that  
19 certain of the acts and conduct of defendants  
20 SUBRAMANIAN, VEDATECH ,and DOES 1 through 50,  
21 inclusive [Cross-Defendants, and each of them,]  
22 as more specifically alleged in paragraphs 18,  
23 **20, and 21**, [17, 19, **and 20**,] inclusive,  
24 constituted or were based on affirmative  
25 misrepresentations by said defendants to QAD  
26 [Cross-Complainants,and each of them] or, in the  
27 alternative, were intentionally and fraudulently  
28 concealed from QAD [Cross-Complainants] by said  
defendants [Cross-Defendants, and each of them]  
[...]

1           59.     This is not exactly a model pleading for fraud. Nevertheless, it is clear  
2 that QAD is alleging that the representations regarding “improperly asserting ownership  
3 to various intellectual property of QAD” was an “affirmative misrepresentation” or were  
4 “intentionally and fraudulently concealed from QAD” [actionable non-disclosure?]

5           60.     Since QAD has not, in spite of repeated efforts clarified what these  
6 specific fraudulent statements are, one has to assume that it includes VEDATECH’s  
7 assertions of ownership of the localized computer software.

8  
9           **THE SECOND CAUSE OF ACTION FOR “UNFAIR COMPETITION”**

10          61.     Paras.25-27 of the Complaint (paras.24-26 of the First-Amended Cross-  
11 Complaint) of QAD Inc. pleads QAD’s cause of action for Unfair Competition under the  
12 California B&P Code §§ 17200 et seq. The relevant passages are:

13           25. [24.] Plaintiffs [Cross-Complainants]  
14 reallege and incorporate herein as if set forth  
15 in full the allegations of paragraphs 1 through  
16 **24 [23]**, of this Complaint [Cross-Complaint].

17           26. [25.] The actions taken by SUBRAMANIAN,  
18 VEDATECH, and defendants DOE 1 through 50,  
19 inclusive, [Cross-defendants, and each of them,]  
20 as set forth herein, constitute unfair  
21 competition and unlawful, unfair or fraudulent  
22 business practices proscribed by Section 17200,  
23 et seq., of the California Business & Professions  
24 Code.

25           [...]

26          62.     Given the breadth of the California Unfair Competition Law (“UCL”) it is  
27 obvious that the allegations regarding intellectual property (i.e. at least paras. 21 [20] (L),  
28 (H), (I), (J), and (K) of the Complaint [First Amended Cross-Complaint] are included in  
QAD’s claims for relief under this cause of action.

1           **THE THIRD CAUSE OF ACTION FOR “INTENTIONAL INTERFERENCE**  
2           **WITH CONTRACTUAL RELATIONSHIPS”**

3           63.     Paras.28-31 of the Complaint (paras.27-30 of the First-Amended Cross-  
4           Complaint) of QAD Inc. pleads QAD’s cause of action for “intentional interference with  
5           contractual relationships”. The relevant passages are:

6                 28. [27.] Plaintiffs [Cross-Complainants]  
7                 reallege and incorporate herein as if set forth  
8                 in full the allegations of paragraphs 1 through  
                27 [26], of this Complaint [Cross-Complaint].

9                 29. [28.] [...] By virtue and as a proximate  
10                result of the actions of defendants [Cross-  
11                Defendants, and each of them,] as set forth  
12                herein, the contractual relationships between QAD  
13                [QAD-USA and/or QAD-Japan] and the aforementioned  
14                companies have been disrupted, resulting in  
15                damage to QAD [Cross-Complainants] in an amount  
16                according to proof at trial, but which QAD is  
17                [Cross-Complainants are] informed and believes,  
18                and thereon alleges [allege] is in excess of  
                \$75,000, exclusive of interest and costs.

19                [...]

20           64.     In this case also it is obvious that the allegations regarding intellectual  
21           property (i.e. at least paras. 21 [20] (L), (H), (I), (J), and (K) of the Complaint [First  
22           Amended Cross-Complaint] are critical for the resolution of QAD’s claims for relief  
23           under this cause of action.

24           **THE FOURTH CAUSE OF ACTION FOR “TRADE LIBEL AND**  
25           **DISPARAGEMENT OF GOODS AND QUALITY”**

26           65.     Paras.32-37 of the Complaint (paras.31-36 of the First-Amended Cross-  
27           Complaint) of QAD Inc. pleads QAD’s cause of action for “intentional interference with  
28           contractual relationships”. The relevant passages are:

1 32. [31.] Plaintiffs [Cross-Complainants]  
2 reallege and incorporate herein as if set forth  
3 in full the allegations of paragraphs 1 through  
4 31 [30], of this Complaint [Cross-Complaint].

5 33. [32.] Since at least October, 1997, and  
6 continuing through the present [thereafter],  
7 defendants SUBRAMANIAN, VEDATECH, and DOES 1  
8 through 50, inclusive, [Cross-Defendants, and  
9 each of them,] has [have] made statements and  
10 remarks to third parties disparaging the quality,  
11 character, utility, value, and workmanship of  
12 QAD's goods, services, officers and employees.  
13 These statements and remarks were and are false,  
14 were made without any reasonable justification,  
15 and were made for the express purpose of harming  
16 QAD's business.

17 [...]

18 35. [34.] At all times relevant herein, the third  
19 parties to whom the disparaging statements and  
20 remarks were made were the present customers,  
21 suppliers and trading partners of QAD [QAD-USA  
22 and QAD-Japan] and those whom with QAD [Cross-  
23 Complainants] were cultivating a future business  
24 or commercial relationship.

25 36. As a direct and proximate of these  
26 disparaging statements and remarks by defendants,  
27 those third parties to whom the statements and  
28 remarks were made have refrained from dealing  
with QAD [Cross-Complainants] or [and/or] limited  
their dealings with QAD [Cross-Complainants,] all  
to QAD's [Cross-Complainant's] damage in an  
amount which will be shown according to proof.



1 37. [36.] QAD is informed and believes, and  
2 thereon alleges, that the conduct of SUBRAMANIAN,  
3 VEDATECH, and the DOE defendants, and each of  
4 them, [Cross-Defendants, and each of them,] as  
5 set forth herein, was intentional, malicious,  
6 oppressive and/or reckless and in conscious  
7 disregard for the rights and welfare of  
8 plaintiffs [Cross-Claimants], as well as done  
9 with the improper intent directly to harm  
10 plaintiffs [Cross-Complainants] and their  
11 business, in that [Cross-]defendants knew the  
12 statements and remarks they were making were  
13 false, but despite such knowledge, they  
14 intentionally libeled plaintiffs' [Cross-  
15 Complainants'] reputation to unjustly benefit and  
16 enrich [...] Accordingly an award of punitive and  
17 exemplary damages is justified [...]

18 66. In this case also it is obvious that the allegations regarding intellectual  
19 property (i.e. at least paras. 21 [20] (L), (H), (I), (J), and (K) of the Complaint [First  
20 Amended Cross-Complaint] form part of the "statements" and "remarks" that  
21 VEDATECH and/or SUBRAMANIAN are supposed to have made that were libelous.  
22 Thus, the resolution of issues related to these allegations are critical for the resolution of  
23 QAD's claims for relief under this cause of action.

24 67. Specifically, QAD is claiming that the alleged assertions of  
25 "ownership to various intellectual property ... including ...  
26 certain computer software" amounted to Trade Libel and Disparagement of  
27 Good and Quality.

28 ///

///

///

1           **THE FIFTH CAUSE OF ACTION FOR “INTENTIONAL INTERFERENCE**  
2           **WITH PROSPECTIVE ECONOMIC ADVANTAGE”**

3           68.     Paras.38-42 of the Complaint (paras.37-41 of the First-Amended Cross-  
4           Complaint) of QAD Inc. pleads QAD’s cause of action for “intentional interference with  
5           prospective economic advantage”. The relevant passages are:

6                 38. [37.] Plaintiffs [Cross-Complainants]  
7                 reallege and incorporate herein as if set forth  
8                 in full the allegations of paragraphs 1 through  
                37 [36], of this Complaint [Cross-Complaint].

9                 39. [38.] QAD [Cross-Complainants, and each of  
10                them,] have developed and enjoyed beneficial  
11                contractual and economic business relationships  
12                with numerous customer accounts in Japan and  
13                accounts based elsewhere in the world, but with  
14                offices in Japan, pursuant to which QAD has  
15                [Cross-Complainants] provided and/or has [have]  
16                the reasonable probability of providing in the  
                future various software products and services  
                related thereto. [...]

17                [...]

18                41. [40.] By virtue and as a proximate result of  
19                the actions of defendants, and each of them,  
20                [Cross-Defendants, and each of them,] as set  
21                forth herein, [Cross-]defendants, and each of  
22                them, have substantially and intentionally  
23                interfered with QAD’s [Cross-Complainants’]  
24                actual and prospective economic relationship with  
25                these existing and potential customers. Such  
                interference has proximately resulted in damage  
                to QAD in an amount according to proof.

26                [...]

1           69.     In this case also it is obvious that the allegations regarding intellectual  
2 property (i.e. at least paras. 21 [20] (L), (H), (I), (J), and (K) of the Complaint [First  
3 Amended Cross-Complaint] are critical for the resolution of QAD's claims for relief  
4 under this cause of action. Specifically herein, QAD claims that its potential to provide  
5 "software products and services" has been allegedly damaged or harmed by the alleged  
6 assertions made by VEDATECH and/or SUBRAMANIAN over these unspecified  
7 "intellectual property".  
8

9           **THE SIXTH CAUSE OF ACTION FOR "BREACH OF FIDUCIARY DUTY"**  
10           **IN THE COMPLAINT (and originally in the "Counterclaims") of QAD**

11           70.     Paras.43-45 of the Complaint (paras.43-45 of the Counterclaims, Exhibit  
12 B, Tab-YY) of QAD Inc. pleads QAD's cause of action for "Breach of Fiduciary Duty"  
13 against SUBRAMANIAN. The relevant passages are:

14           43. Plaintiffs reallege and incorporate herein as  
15 if set forth in full the allegations of  
16 paragraphs 1 through **42 [41]**, of this Complaint  
17 [Cross-Complaint].

18           44. As a director and Representative Director of  
19 QAD-Japan, defendant SUBRAMANIAN owed a fiduciary  
20 duty to QAD-Japan, and to QAD-USA as a  
21 shareholder in QAD-Japan, to act in utmost good  
22 faith in the best interests of the corporation  
23 and its shareholder, not to compete with the  
24 corporation, not to engage in self-dealing, and  
25 not to misappropriate assets of QAD-USA or QAD-  
26 Japan. By virtue of the acts and conduct set  
27 forth above, **as more specifically alleged in**  
28 **paragraphs 18, 20, and 21**, SUBRAMANIAN said  
fiduciary duties to QAD, which breaches have  
proximately resulted in damages to QAD in amount  
subject to proof.

1 [ . . . ]

2  
3 71. In this case it is quite obvious that the allegations regarding intellectual  
4 property (i.e. at least paras. 21 (L), (H), (I), (J), and (K) of the Complaint are critical for  
5 the resolution of QAD's claims for relief under this cause of action. Specifically herein,  
6 QAD claims that SUBRAMANIAN allegedly breached his fiduciary duties in allegedly  
7 making improper assertions of "ownership" regarding unspecified "intellectual property"  
8 regarding "certain software".

9 **THE SIXTH CAUSE OF ACTION FOR "BREACH OF CONTRACT" IN THE**  
10 **FIRST-AMENDED CROSS-COMPLAINT OF QAD**

11 72. Paras.42-45 of the First-Amended Cross-Complaint (Exhibit B, Tab-YY)  
12 of QAD Inc. pleads QAD's cause of action for "Breach of Contract" against  
13 VEDATECH and SUBRAMANIAN. The relevant passages are:

14 42. Cross-Complainants reallege and incorporate  
15 herein as if set forth in full the allegations of  
16 paragraphs 1 through 41, of these [sic]  
Counterclaims.

17 43. The conduct undertaken by SUBRAMANIAN and  
18 "Vedatech Corporation", alleged by plaintiffs in  
19 the Complaint to be VEDATECH, constitutes a  
20 breach by Cross-Defendants of written and oral  
21 agreements between Cross-Complainants and  
"Vedatech Corporation".

22 [ . . . ]

23 73. In this case it is QAD's case that the allegations regarding intellectual  
24 property (i.e. at least paras. 20 (L), (H), (I), (J), and (K) of the First-Amended Cross-  
25 Complaint) are tantamount to a breach of contract. As pleaded, the breach of contract  
26 claim cannot be resolved without resolving the issues raised in para.20 thereof.  
27  
28

74. It is clear that QAD has made allegations regarding unspecified “improper” assertions of ownership rights to various “intellectual property” including “certain computer software”. What was and is not clear from the face of this “artfully pleaded” complaint (first-amended cross-complaint) at all is:

75. What IS clear is that every single cause of action alleged by QAD incorporates these allegations and requires a proper resolution of these allegations in order to absolve VEDATECH parties from all liability as alleged in the Complaint and the First-Amended Cross-Complaint.

76. In spite of haling Vedatech Inc. (the wrong party) and Subramanian into Court, even while proceedings were on foot in Japan, QAD has, to this day, refused to provide honest or even minimal discovery.

77. A classic example is that QAD to this day has refused to provide basic insurance information regarding coverage for two different situations (and recent requests just days ago are still being met with silence):

(A) [NOT PRODUCED UNTIL MAY 2003] QAD’s own Directors and Officers (“D&O”) Policies that might actually provide or might have provided coverage for SUBRAMANIAN.<sup>8</sup> QAD has provided copies of “claims-made” D&O

<sup>8</sup> See EXHIBIT G, pages 1, 2, for QAD’s internal discussion on how to cut off insurance for SUBRAMANIAN. This happened AFTER the decision by QAD to sue SUBRAMANIAN in the California Courts. In addition, on May 9, 2003, more than 2 years after some “form” interrogatories were propounded (in April 2001), QAD

1 policies for the August 1997 through mid August 2000 period ONLY in May  
2 2003, after years of stonewalling, and even then leaving a cloud of uncertainty  
3 over the critical Jan 1998 period and, of course, the period covering the August  
4 31, 2000 “cross-complaint” of QAD;

5 (B) [NOTHING PRODUCED] QAD’s own CGL (Commercial General Liability)  
6 policies that would cover any judgments against QAD and which might permit  
7 Vedatech Parties to offer open settlement proposals to QAD’s insurers.<sup>9</sup>  
8

9 78. VEDATECH Parties tried several different ways to get clarifications or  
10 discovery from QAD: (1) informal means [no luck at all], (2) demurrers [no luck, but see  
11 Order of Judge Rushing in next section] (3) Document Discovery [met with extended  
12 stonewalling – QAD ignored the Magistrate Judge, the Hon. Patricia Trumbull’s order  
13 when in Federal Court (Exhibit B, Tab-18.) and then after remand claimed the Order was  
14 “moot”], and (4) Interrogatories, where, after years of stonewalling [as can be seen easily  
15 and clearly from the current responses and boilerplate objections to even simple  
16 questions], QAD finally conceded in its responses mailed on March 10, 2004 (received  
17 on March 11, 2004) that it was, all along, referring to “copyrights” when it “artfully” (or  
18 coyly) made references to “intellectual property” in its Complaint in para.21(L);

19  
20 reluctantly disclosed some insurance information regarding property loss *for itself*.  
21 (Exhibit E, Tab-2.2, p.3). But this does not include the critical CGL (Commercial General  
22 Liability) coverage, which would indemnify QAD against any Judgments that Vedatech  
23 would get against them. Vedatech parties have even in the last several weeks requested  
24 counsel for QAD, Mr Connell, to forward such documents or provide information  
25 regarding the same, but such requests have been met with silence. It is now more than  
26 six (6) years from QAD chose to sue Vedatech Inc, the Washington State company and  
27 Subramanian in California, but QAD does not see it fit to share such information with us.

28  
29 <sup>9</sup> This is notwithstanding the fact that now, AFTER the removal, QAD has entered  
30 into a collusive and secret “settlement” with Vedatech’s insurers, St.Paul, and the duo is  
31 now trying to use that disputed “settlement” to defeat federal jurisdiction.

1 **SUMMARY OF EFFORTS THROUGH DEMURRERS IN STATE COURT**

2 79. On August 24, 2000, Defendant Subramanian, in his demurrer to QAD's  
3 original Complaint, raised the issue of the uncertain nature of the allegations in  
4 para.21(L) of the Complaint. (Exhibit D, Tab-1.2, Memorandum, p.14, lines 7-11.)  
5 Vedatech parties also demurred to QAD's first-amended cross-complaint where they  
6 complained that QAD's pleadings were vague and uncertain. (id, Tab-3.1, ¶¶  
7 5,10,15,20,25,30,35,40,45,50,55,60.) In ruling upon this motion, the Court (the Hon.  
8 Judge Rushing), in its (his) Order dated January 26, 2001, specifically addressed this  
9 issue as follows: (Exhibit D, Tab-8, ORDER, p.13, lines 18-20; and lines 23-25):

10 Vedatech claims that allegations are vague in the  
11 following respects: (1) uncertainty about alter  
12 ego, argued above; (2) uncertainty regarding  
13 allegations of intellectual property; [...]

14 These matters generally can be found in  
15 discovery. It is certainly within the power of  
16 cross-defendants to take discovery on each of  
these matters about which they are uncertain.

17 **SUMMARY OF EFFORTS THROUGH DISCOVERY REQUESTS**

18 80. Vedatech Inc. removed the LEAD case on July 29, 1998 to Federal Court  
19 C-98-20792 SW. Vedatech Inc., the Washington State, moved for dismissal for lack of  
20 personal jurisdiction. This was denied on March 16, 2000. (ORDER at Exhibit B, Tab-  
21 11.) In spite of the fact that its attorneys, the firm of Bogle and Gates dissolved and the  
22 new attorneys Morrison and Foerster had to come up to speed in a short time frame,  
23 Vedatech Inc. moved promptly to request documents and interrogatory answers from  
24 QAD. The first set of requests were propounded on June 30, 1999. (Exhibit E, Tab-1,  
25 and Exhibit F.) QAD responded with 100% OBJECTIONS, all of them frivolous, and  
26  
27  
28

boilerplate.<sup>10</sup> Vedatech moved promptly to compel, and the Honorable Magistrate Judge Patricia Trumbull granted the said motion. (ORDER at Exhibit B, Tab-18.) QAD was supposed to respond with discovery on October 8, 1999. No responses were produced. Subsequently, a small number of heavily redacted and filtered set of documents were produced, but no interrogatory responses were produced. Subsequently, Vedatech parties moved for sanctions which were granted on Mar3, 2000. (ORDER at Exhibit B, Tab-29.) Just before the sanctions hearing, on February 15, 2000, QAD produced its First Set of Supplemental responses to the interrogatories (i.e. the first responses that were not simply objections). (Responses, Exhibit E, Tab-1.2.)

#### **INTERROGATORIES PROPOUNDED IN FEDERAL COURT IN JUNE 1999**

81. For example, the following interrogatory was propounded in June 1999.

##### **INTERROGATORY NO. 2: (See Exhibit E, Tab 1, pp.6-7)**

Describe in detail the services performed by Vedatech Incorporated in connection with the formation and operation of QAD Japan K.K., including but not limited to the pre-sales technical support and localization services, as alleged in Paragraph 16 of the Complaint,

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<sup>10</sup> It is interesting to note that but for some minor concessions, the latest interrogatory response mailed on March 10, 2004 is based on the same style, template, and stonewalling tactics. Strangely though, QAD claims to be ready for trial. This case is NOWHERE near being ready for trial and unless QAD provides honest and proper discovery, grave injustice would be perpetrated on the Vedatech Parties. An additional reason why Vedatech parties have not been able to file more motions to Compel QAD to provide discovery relate to the collateral issue of the effect of the insurer St.Paul and its “coverage action”, in which St.Paul has been viciously attacking its own insured in myriad ways, some of which is the subject of the related cases, C-04-01249, and C-04-01403, both of them hopefully to be reassigned to be handled along with this case. As noted elsewhere, QAD and St.Paul are now collusively attempting to defeat Federal Jurisdiction by coming up with a secretly negotiated “agreement and release” by which they attempt to dismiss various claims in this action *after* removal.



1 identify all documents describing, referring or  
2 relating to such services, and identify the  
3 individual(s) who are most knowledgeable about  
4 the foregoing.

5 82. On February 15, 2000 days before the sanctions hearing, the following  
6 response was provided, Exhibit E, Tab-1.2, p.8, lines 5-16: (emphasis added)

7 Vedatech, acting through Mani Subramanian or  
8 persons employed or contracted by him, at various  
9 times performed virtually all of the services in  
10 connection with the formation and operation of  
11 QAD Japan K.K., including pre-sales, sales and  
12 localization services, from the inception of QAD  
13 Japan K.K. through in or about August, 1997.

14 These services included: Translation of software  
15 and literature; programming services;

16 Administrative services, including clerical,  
17 financial, and procurement; Sales services; Pre-  
18 sales functions for sales efforts, including  
19 demonstrations, suitability analyses, and  
20 preparation of quotes; Software installations;  
21 Training; and System Testing.

22 83. Yet another interrogatory propounded in June 1999, elicited the following  
23 response:

24 **INTERROGATORY NO. 6: (See Exhibit E, Tab 1, p.7)**

25 Describe in detail each of the fraudulent,  
26 unauthorized, or unfair activities or actions in  
27 which Vedatech Incorporated has engaged or  
28 continues to engage, as alleged in Paragraphs  
18(A)-(D), and 21(A)-(L) of the Complaint, [...]

1           84.     QAD answered with only objections August 2, 1999. On February 15,  
2 2000, days before the sanctions hearing, the following was provided: (id, Tab-1.2, p.13)

3           With respect to the first portion of this  
4 Interrogatory, please see Exhibit A. [...]

5  
6 [ Exhibit A of this response (after id, p.25), dealing with para.21(L) states : ]

7           QAD Inc. paid in excess of \$1.0 Million to  
8 Vedatech, either directly or through QAD Japan  
9 K.K., for localization of its software with the  
10 understanding that such software would be owned  
11 by QAD Inc. **Subramanian has claimed that**  
12 **ownership of such localized software belongs to**  
13 **Vedatech. Such a claim is either invalid, or, if**  
14 **valid, resulted from Subramanian's failure, as**  
15 **President and Representative Director of QAD**  
16 **Japan K.K., to fulfill his fiduciary duty to**  
17 **Plaintiffs to obtain the necessary ownership**  
18 **rights for QAD Inc.**

19           85.     This answer also illustrates the broad nature of the claims made by QAD.  
20 As noted in ¶¶ 70-71 above, the allegations of para.21(L) of the complaint also go to the  
21 cause of action for Breach of Fiduciary Duty as they go to all of the causes of action in  
22 the Complaint. The issue of the "ownership of the intellectual property" is a key issue  
23 for QAD and overshadows many of the other red herrings that are alleged in the  
24 Complaint. For example, in the document and other discovery that Defendants have been  
25 able to obtain, the only evidence of any of the allegations in the Complaint related to this  
26 topic. Most of the other allegations are false and cooked up, whereas the dispute over the  
27 "intellectual property" is real and substantial.  
28

1 **INTERROGATORIES RE-PROPOUNDED IN STATE COURT IN APRIL 2001**

2 86. In April 2000, the case was remanded by stipulation and order as  
3 described elsewhere in this Notice. (Remand Orders, Exhibit B, Tabs-36,37,38.)

4 87. After remand, QAD claimed that the order of the Magistrate Judge was  
5 “moot” and hence it had no further obligations to produce documents or otherwise  
6 followup on the discovery orders made in Federal Court. Accordingly, in April 2001,  
7 Vedatech Parties had to start a new round of discovery repeating many of the same  
8 questions already asked in June 1999 but not answered (many not to this day.)

9 88. For example, an interrogatory relating to the work performed by Vedatech  
10 for QAD (including the “localization”, the subject matter of the “intellectual property”  
11 claims,) elicited NO response at first, and then, after years of stonewalling, the following  
12 response in May 2003: **Form Interrogatory No. 50.1 (Exhibit E,**  
13 **Tab 2) REQUEST made in APRIL 2001**

14 For each agreement alleged in the pleadings:

15 (a) Identify all Documents that are part of the  
16 agreement and for each state the name, ADDRESS,  
17 and telephone number for each PERSON

18 **NO substantive responses BY SEP 10, 2001 DEADLINE**

19 **RESPONSES PROVIDED ON MAY 9, 2003 (id, tab-2.2)**

20 [...] In the course of the parties’ dealing and  
21 relationship from early 1994 through mid-1997,  
22 there were also numerous “agreements” between the  
23 parties with respect to work done by Vedatech and  
24 paid for by QAD Japan K.K. and/or QAD Inc. These  
25 agreements, however which were both written and  
26 non-written, are not specifically “alleged in the  
27 pleadings” per se. **However, these agreements are**  
28 **relevant at least to the extent that they relate**  
**to the terms under which Vedatech performed**

1        localization and translation work for QAD Inc.,  
2        and specifically, to the extent that such  
3        agreements established QAD's ownership interest  
4        in the software.

5        89.     This is the first time QAD clearly states that it is contesting the  
6        "ownership" in the software on the basis of the type of, nature of, and the details of the  
7        contractual relationship between the parties. In and of itself, it still sounds in contract  
8        law, a state cause of action. Again, the "ownership interest" which is the vague term  
9        QAD has consistently and "artfully" used to conceal the underlying copyright issues.

10       90.     Another companion question propounded in April 2001 elicited the  
11       following response, which is a simple regurgitation of the language in the Complaint:  
12       **Form Interrogatory No. 50.2 (Exhibit E, Tab 2) REQUEST**  
13       **made in APRIL 2001**

14       Was there breach of any agreement alleged in the  
15       pleadings? If so, for each breach describe and  
16       give the date of every act or omission that you  
17       claim is the breach of the agreement.

18       **NO substantive responses BY SEP 10, 2001 DEADLINE**

19       **RESPONSES PROVIDED ON MAY 9, 2003 (id, Tab-2.2)**

20       [...]Plaintiffs further content that Subramanian  
21       and/or Vedatech's improper assertion of ownership  
22       rights over localized QAD Inc. MFG/PRO software  
23       constituted a breach of agreements with QAD Inc.

24       91.     Further special interrogatories propounded in April 2001 also elicited  
25       vague responses after years of pressing for answers: **Special Interrogatory**  
26       **No.6 (Exhibit E, Tab 3) REQUEST made in APRIL 2001**

27       Why did you select Subramanian and Vedatech to  
28       enter into the March 24, 1994 contract.

**NO RESPONSES PROVIDED BY SEP 10, 2001 DEADLINE**

1           **RESPONSES FINALLY PROVIDED ON MAY 9, 2003**

2           [... ] In addition, Mr. Subramanian and his  
3           company appeared to possess existing skills to do  
4           localization work. QAD determined at the time  
5           that his approach appeared preferable to, and to  
6           have a lower entry cost than, starting "from the  
7           ground up" with foreign resources. In addition,  
8           it seemed preferable to entering into a  
9           relationship with a joint venture partner, or  
            simply entering into a relationship with a local  
            distributor.

10           92.     More direct questions regarding the intellectual property issue did not get  
11           any responses at all: **Special Interrogatory No.58 (Exhibit E,Tab 3,**  
12           **p.11) REQUEST made on APRIL 18, 2001**

13           Please identify the intellectual property owned  
14           by QAD (improperly alleged to be owned by  
15           Vedatech and/or Subramanian.

16           **RESPONSES PROVIDED ON SEP 10, 2001**

17           Plaintiffs object to this Interrogatory as  
18           unintelligible, overbroad, and improperly  
19           argumentative and/or misstating plaintiffs'  
            contentions.

20           **NO FURTHER RESPONSES PROVIDED ON MAY 9, 2003**

21           93.     The next question *eventually* after a year and a half of stonewalling,  
22           produced a somewhat less evasive answer: **Special Interrogatory No.59**  
23           **(Exhibit E,Tab 3) REQUEST made on APRIL 18, 2001**

24           Please state all facts which support your  
25           contention that Subramanian and Vedatech  
26           improperly asserted ownership to various  
27           intellectual property of QAD.

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**RESPONSES PROVIDED ON SEP 10, 2001**

<< Unhelpful generalized stonewalling >>.

**FURTHER RESPONSES PROVIDED ON MAY 9, 2003**

Plaintiff's further respond: In and after 1994, QAD entered into agreements with Vedatech, through Subramanian, to provide Japanese localization/translation of QAD's MFG/PRO software. QAD paid Vedatech for such services. Under the terms of the agreements, in return for payment, QAD was to have been granted ownership rights in the modified software - including the object code and source code, and Vedatech was not to retain any such rights. In or about 1997, QAD requested that Subramanian and/or Vedatech provide to QAD the object code and source code for the localized MFG/PRO software, but Subramanian and/or Vedatech refused to turn it over and, to responding party's knowledge, continue to refuse to turn it over.

In or about late 1997 or early 1998, QAD became aware that Vedatech and/or Subramanian were apparently attempting to sell copies of (i.e., grant licenses for) the localized /translated MFG/PRO software to at least one customer in Japan. Neither Vedatech nor Subramanian had the right to grant such licenses to QAD's MFG/PRO software, inasmuch as neither Vedatech nor Subramanian were authorized distributors for QAD. QAD Japan K.K. has been established to act as QAD's distributor for Japan and were the sole licensor of the source code, as provided in March 24, 1994 Agreement.

1           94.     Finally in February 2004, after QAD refused to provide ANY document  
2 from email archives that had been requested since June 1999, and continued to stonewall,  
3 Vedatech parties propounded a set of interrogatories focused specifically on the issue of  
4 the nature of the “ownership in intellectual property” that QAD was complaining about.  
5 It is clear from the responses from QAD that even after so many years of stonewalling it  
6 was not willing to provide simple straightforward answers to these specific questions.  
7 Nevertheless, for the first time, QAD made clear its real position, which is that it claimed  
8 ownership of “copyrights” in the localized /translated software that was developed by  
9 Vedatech Parties (as explained in the prior interrogatory responses.) See, for example,  
10 **Special Interrogatory No.13 (Exhibit E,Tab 9) REQUEST made**  
11 **on FEBRUARY 9, 2004**

12           DESCRIBE any sales, licenses or maintenance  
13 contracts by or in which QAD sold or licensed,  
14 maintained or extended any previously existing  
15 sale, license or maintenance contract of any  
16 source code, software or INTELLECTUAL PROPERTY,  
17 at any time after July 31, 1997, that included or  
18 incorporated any source code, software or  
19 INTELLECTUAL PROPERTY owned, created or authored  
by or otherwise acquired, directly or indirectly,  
from VEDATECH..

20           For purposes of this interrogatory, “DESCRIBE” is defined as:  
21 stating whether any such sales or licensing or agreement over  
22 maintenance took place, to whom any such software or license  
23 or maintenance agreement were sold or licensed or with whom  
24 it was agreed to, the dates of any such sale or license or  
25 agreement, the place of any such sales or licensing or  
26 agreement, and the name of the product, source code, version  
number(s), of the software or INTELLECTUAL PROPERTY  
sold or licensed or made the subject of any agreement.

1           “INTELLECTUAL PROPERTY” or “INTELLECTUAL  
2           PROPERTIES” means: The source code, software or  
3           documentation or other intellectual properties, QAD paid  
4           VEDATECH for or otherwise acquired from VEDATECH  
5           including but not limited to, the intellectual property or  
6           intellectual properties referred to explicitly or implicitly in  
7           paragraph 21(L) of QAD’s complaint in CV 771638 or in  
8           paragraph 20(L) of QAD’s cross-complaint in CV 784685.

9           **RESPONSES SENT BY U.S. MAIL ON MARCH 10, 2003**

10          QAD objects to this Interrogatory on the  
11          following grounds: (1) C.C.P. Section 2030(c)(5)  
12          states, in pertinent part, that “No specially  
13          prepared interrogatory shall contain subparts, or  
14          a compound, conjunctive, or disjunctive  
15          question.” This Interrogatory contains at least  
16          seven (7) such “subparts” and “compound,  
17          conjunctive, or disjunctive questions.”  
18          Furthermore, the purported “defined terms” –  
19          including “INTELLECTUAL PROPERTY, “ “VEDATECH,”  
20          and “QAD” – are themselves, compound,  
21          conjunctive, or disjunctive to the extent that  
22          they are sufficiently vague and ambiguous to  
23          preclude a clear understanding by QAD of what is  
24          being asked.

25          Subject to the foregoing objections, and to the  
26          extent that QAD is able, in light of the problems  
27          raised by the foregoing objections, to form any  
28          assumption as to the identify of the  
29          “INTELLECTUAL PROPERTY” referenced in this  
30          Interrogatory, QAD responds:

31          In spite of multiple requests from QAD over  
32          several years, and despite specific promises to  
33          do so in 1997, neither Mr. Subramanian nor any



1 Vedatech corporate entity has provided QAD with  
2 access to said "INTELLECTUAL PROPERTIES." QAD  
3 contends that it did or was entitled to acquire  
4 all rights, including any copyrights or  
5 copyrightable interests to these localizations  
6 and customizations and that, if such rights were  
7 not, in fact, acquired, the failure to acquire  
8 any such rights was due to improper actions of Mr  
9 Subramanian and Vedatech. However, QAD is unable  
10 to respond to the specific requests for  
11 information contained in this Interrogatory by  
12 virtue of the fact that neither Mr. Subramanian  
nor Vedatech have ever provided copies of the  
subject properties to QAD despite repeated  
requests for them.

### 13 **FIRST INTIMATION REGARDING QAD'S CLAIM TO COPYRIGHTS**

14 95. This was the first time that QAD had formally raised copyright issues in  
15 detailing their artfully pleaded Complaint. Not only does QAD make copyright claims in  
16 these interrogatories, it specifically ties it in this interrogatory response directly to the  
17 State Law claim it has made for "Breach of Fiduciary Duty" against Subramanian. As  
18 submitted above, each and every one of the causes of action are intertwined with the  
19 allegations regarding "intellectual property", the "ownership" thereof, and the nature of  
20 the relationship between the parties that would affect such rights to "intellectual  
21 property". It has thus become clear that this issue of "intellectual property" that QAD  
22 was carefully skirting is a dispute over the issue of who owns the Copyright in the  
23 "localized" / translated software. The next question is whether the nature of this dispute  
24 requires the interpretation and/or the construction of the Copyright Act or whether the  
25 state law causes of action are complete preempted, in which case a "federal question"  
26 would properly have been raised, justifying removal and clearing the hurdle for subject  
27 matter jurisdiction of this Court.

1 **MAR 15, 2004 REMOVAL TO FEDERAL COURT**

2 96. On this basis, Subramanian, Vedatech Inc., and Vedatech K.K.  
3 individually and jointly removed the consolidated action to Federal Court on March 15,  
4 2004. QAD parties' attorneys were hand-served with the Notice of Removal on March  
5 15, 2004. This was assigned to Case No. C-04-01035 PJH.

6 97. On the morning of March 16, 2004, QAD parties, in an attempt to defeat  
7 federal jurisdiction, claimed to have entered into an informal "oral agreement" with  
8 St.Paul, removing parties' insurer, to settle all of their claims against removing parties.

9 98. On March 23, 2004, the District Court issued a Show Cause Order  
10 (Exhibit H, Tab-5), requesting removing parties to prove subject matter jurisdiction. On  
11 April 12, 2004, removing parties filed an Amended Notice of Removal, (Exhibit-H, Tab-  
12 8). On April 29, 2004, the District Court entered a REMAND order, (Exhibit H, Tab-19.)

13 99. The order of the District Court may be interpreted in at least two different  
14 but equally plausible and proper ways:

- 15 • First, that there was no federal question raised as of March 15, 2004 [Line 1 of  
16 Order] and the removal of the case was premature ("untimely") [Line 2 of the  
17 Order].
- 18 • Second, that there was a federal question [as follows if Line 2 was referring to the  
19 30-day removal time limit], but the Removing parties were at fault for having  
20 "failed to establish" such a federal question in response to the Order to Show  
21 Cause [Line 1 of the Order], and in addition, the removal was more than 30 days  
22 from when the federal question became apparent [Line 2 of the Order].
- 23 • It is possible that the Court meant the Order differently, but removing parties are  
24 unable to analyze the matter any further without further investigation.

25  
26 100. For the purpose of this Notice of Removal, removing parties will proceed  
27 on the basis of the first interpretation.

1 **NEW EVIDENCE SINCE MARCH 15, 2004**

2 101. On April 26-27, 2004, QAD Inc., through its counsel, Mr William Connell  
3 filed responses to the Order to Show Cause by the Court, (Exhibit-H, Tab-14-18). In the  
4 motion papers, especially the Memorandums of Exhibit-H, Tabs-14, 17, Mr William  
5 Connell provides in great detail clear proof of the existence of a “federal question” and  
6 complete preemption of the state law claims, by clarifying previous allegations and  
7 making several new allegations, all very strongly. Many of the “factual” allegations  
8 regarding the non-copyright issues are considered by removing parties to be false (and  
9 mostly scandalous and inflammatory), but the allegations and clarifications relevant to  
10 the issue of a federal question can be broadly classified as:

- 11 a. Clarifications that prove the need for the application of “work-for-hire”  
12 doctrine – to the extent that the argument in the previous notice of removal  
13 was based on logical necessity of the adoption of this doctrine, the current  
14 “clarifications” by QAD plaintiffs affirmatively make all the allegations  
15 necessary to conclusively establish the need to interpret this part of the  
16 Copyright Act in order to prove the state law causes of action for those  
17 acts that involve matters relating to the localization and the software  
18 involved.
- 19 b. Thus, although QAD, through Mr Connell, parrots the magic phrase that  
20 this is a pure contractual issue, the new allegations of Mr Connell make it  
21 absolutely clear that there is no written agreement regarding the ownership  
22 of copyrights. The burden for QAD is to establish that they have  
23 “ownership” of such rights IN SPITE OF THE work-for-hire doctrine.  
24 Thus, without the need for construction and interpretation of the Copyright  
25 Act, none of the so-called “contractual” claims can be resolved, and  
26 certainly not with reference to substantive law under the California Codes  
27 or common law with respect to contracts, obligations etc.

1 c. Clarifications that prove the need for the application and interpretation of  
2 the Berne Convention in order to properly resolve the issues of copyright  
3 infringement or equivalent acts that removing parties are accused of (e.g.  
4 “licensing” software without authorization); Although in the previous  
5 removal, defendants had argued that it was logical that the Berne  
6 Convention needs to be interpreted (as it followed logically once it was  
7 confirmed that the matter was one for copyrights), the new allegations  
8 from QAD affirmatively confirm by statements made by Mr Connell now  
9 on behalf of QAD that the matter is one regarding Japanese copyrights and  
10 that QAD has now developed a new software. These new affirmative and  
11 confirmed allegations, in conjunction with the documentary evidence  
12 regarding “reengineering” of Vedatech’s software by QAD’s Australian  
13 subsidiary, now confirm that the infringement activities of QAD in  
14 California at its Carpinteria headquarters and other places in the United  
15 States (such as New Jersey) are actionable in this District Court.  
16

17 102. In the previous removal, removing parties relied on the logical conclusions  
18 to be drawn from QAD’s confirmation that the “intellectual property” it was referring to  
19 was indeed “copyright”. In its April 26-27, 2004 motion papers, QAD has, on its own,  
20 now made affirmative allegations and confirmation that the “ownership” relates *both* to  
21 copyright and physical ownership, that copyright issues ARE involved in the proof of at  
22 least the three causes of action that QAD itself refers to, confirms that there are NO  
23 written agreements with respect to the issue of such copyright ownership (thus  
24 automatically triggering the application of the “work for hire” doctrine” (which is the  
25 default situation under the Copyright Act) with respect to the ownership of the  
26 Copyrights, and also confirms that at least some of the copyrights in the localized code  
27 arise under Japanese law, thus triggering the application of the Berne Convention. In  
28

1 addition, QAD now additionally makes allegations for the first time that confirm that it  
2 has developed software to replace the localized software. This, combined with the  
3 document from discovery referred to above that shows that their Australian subsidiary  
4 was involved in “reengineering” the localized software and removing Vedatech “labels”,  
5 now for the first time show that QAD itself has engaged in copyright infringement  
6 activities in the United States in reliance upon the Vedatech localized software (thus  
7 again triggering the application of the Berne Convention).

8 103. Thus, the prior remand order found that there was no “federal question” as  
9 to the prior removal, which, by federal law is deemed to be based on the position as of  
10 March 15, 2004. Since then Mr William Connell, QAD’s counsel has provided very  
11 detailed information confirming the theories of removing parties based on a fair  
12 interpretation of the confirmation of the identity of the “intellectual property” as  
13 “copyright” on March 11, 2004 [In fact, as noted above, QAD now claims that this both  
14 refers to physical characteristics and the copyright attribute, thus confirming that  
15 Vedatech parties could not have removed earlier on the basis of the prior bare allegations  
16 of “ownership” without clarification that copyrights were involved].

#### 17 **IMPACT OF THE NEW EVIDENCE / CLARIFICATIONS SINCE APR 26, 2004**

18 104. Once QAD has made it clear that it seeks to *also* assert copyrights, in  
19 addition to physical possession and ownership, and has all along based its state law  
20 claims on its accusations / allegations against Vedatech parties regarding their purported  
21 violation of QAD’s copyrights, and given that since March 15, 2004, QAD has amplified  
22 its previous pithy allegations with detailed allegations that conclusively state and prove  
23 that copyright issues are necessary for the resolution of state law causes of action [i.e,  
24 with respect to all matters that involve the issues of software and intellectual property],  
25 the following aspects of QAD’s Complaint become relevant:  
26  
27  
28

- 1 a. QAD claims that it “paid over \$1.0 Million to Vedatech” and that justifies QAD’s  
2 allegation that Vedatech’s claims for ownership is a “breach of fiduciary duty”.  
3 Without the issue of copyrights, this may sound in state law claims on contract,  
4 but in the context of copyrights this is statutorily controlled under the “work for  
5 hire” doctrine. (17 U.S.C. §§ 101, 201(b) etc.) It is impossible to resolve QAD’s  
6 claims (even though they sound in state law) without construction of the  
7 Copyright Act, 17 U.S.C. §§101 et seq. The new information provided by QAD  
8 since April 26, 2004 in its motion papers provide clear evidence and allegations  
9 that there is no written agreement and that reliance needs to be placed on the  
10 “work for hire” doctrine of the Copyright Act for the resolution of its claims  
11 regarding software and intellectual property.
- 12 b. In addition, QAD is now essentially accusing Vedatech of copyright infringement,  
13 even though that cause of action is hidden in the artful pleading [i.e., QAD has  
14 now made it clear, especially so in its April 26, 2004 motion papers, that  
15 Vedatech has allegedly unlawfully “licensed” its software and that it is improper  
16 because QAD owns the copyrights]. In their May 9, 2003 supplemental response  
17 to Interrogatory No.59, QAD made vague allegations of impropriety regarding  
18 Vedatech “apparently attempting to license localized software to at least one  
19 customer in Japan.” The April 26-27, 2004 papers submitted by Mr William  
20 Connell affirmatively confirm the interpretation of these responses in light of the  
21 new revelation that the nature of the “intellectual property” was copyrights all  
22 along. While this may sound in contract, in the context of “copyrights” it is  
23 primarily an infringement under 17 U.S.C § 501 of QAD’s alleged “copyrights”,  
24 the issue of “copyright” itself being claimed for the first time in QAD’s responses  
25 mailed on March 10, 2004. Whereas it can be said that QAD has not specifically  
26 pleaded copyright infringement, QAD claims these actions are a breach of  
27 Subramanian’s fiduciary duties, amount to trade libel, interfered with existing and  
28

1 potential customer relationships, was unfair competition, and in addition  
2 amounted to fraud. The April 26-27, 2004 papers now confirm affirmatively that  
3 they are definitely implicated at least (per QAD) in the causes of action for  
4 contract, breach of fiduciary duty and fraud, specifically in the context of  
5 copyrights). 28 U.S.C. §1338(b) in fact would give the Court original jurisdiction  
6 over this “entire action” on the basis of the unfair competition claims (although  
7 they are pleaded in terms of the California B&P sections 17200 et seq.)

- 8 c. Although a federal defense is normally not a reason for assumption of federal  
9 jurisdiction, when there is complete preemption, it does provide jurisdiction over  
10 the state law claims. In this case, QAD’s affirmative claims involve state law  
11 claims that require the interpretation of the Copyright Act are also simply riding  
12 on top of essentially claims for copyright infringement.
- 13 d. First, even without reaching the question of a federal defense, the Complaint  
14 requires the interpretation and construction of the Copyright Act. One  
15 interpretation of the work-for-hire doctrine would absolve Defendants of all  
16 responsibility, and another interpretation would cause them liability [simple  
17 preemption / artful pleading doctrine].
- 18 e. Second, this is a clear cut case of complete preemption of the state law causes of  
19 action, in this case of each and every one of the various causes of action. Even the  
20 cause of action for fraud, which is poorly pleaded, embraces fully the issues  
21 regarding the allegations of copyright – for example, QAD clearly claims that the  
22 lack of “transfer of ownership” which it says was a breach of fiduciary duty, also  
23 sounds in fraud. The new papers in April 25-26, 2004 confirm this.
- 24 f. Contrary to QAD’s understanding of this matter, in the context of complete  
25 preemption of a state law cause of action, it is not relevant that there are other  
26 allegations that would enable QAD to prove the same cause of action without  
27 reference to federal law (of Copyrights here). Since the issues involving  
28

1 copyright need interpretation and construction of the Copyright Act for the  
2 purpose of resolution of the allegations that QAD has made vis-à-vis the software  
3 and intellectual property issues, ALL other issues relating to that cause of action  
4 are subsumed and completely preempted by the Copyright Act / federal laws.  
5 (See e.g. the case of Rosciszewski v Arete Assoc. Inc., 1 F.3d 225 (4<sup>th</sup> Cir., 1993)  
6 referred to in the March 23, 2004 Show Cause Order of the Court (Exhibit-H,  
7 Taqb-5, p.6, lines 7-8). A complete preemption analysis along the lines of  
8 Firoozye v Earthlink Network 153 F.Supp.2d 1115 (N.D.Cal., 2001), or Worth v.  
9 Universal Pictures, Inc., 5 F.Supp.2d 816, 821 (C.D.Cal.,1997), with the detailed  
10 allegations and information provided by QAD's counsel Mr William Connell in  
11 the motion papers of April 26, 2004 and April 27, 2004 show that at least one or  
12 more, but in fact all of the causes of action are completely preempted by the  
13 Copyright Act. This situation can be distinguished from the facts in Dielsi v.  
14 Falk, 916 F.Supp. 985 (C.D.Cal.1996) in that because of the operation of the  
15 Berne Convention there is no requirement for registration of the copyrights that  
16 arose under Japanese law that are alleged to have been violated, at least in part  
17 within the United States by United States plaintiffs (viz. Subramanian when in the  
18 United States as alleged by QAD). Furthermore, QAD's own copyright  
19 infringement within the United States of the Japanese copyrights claimed by  
20 Vedatech are also governed by the Berne Convention and do not need registration  
21 as was found necessary in the Dielsi case. In the case of complete preemption  
22 such as herein, such a defense by removing parties also give rise to the federal  
23 question necessary for removal through the doctrine of "complete preemption".  
24 g. In this case, Vedatech parties DO have a complete defense in the Copyright Act.  
25 Specifically, Vedatech parties now wish to amend their answers to state a defense  
26 based on the work-for-hire doctrine under the Copyright Act, on being the true  
27 authors of the localizations and the translations and hence prove that there was  
28



1 nothing “improper” even if any “claims to ownership” etc. were made to  
2 customers, or attempts to “license” the localized software were made.

3 h. In addition, Vedatech parties will also, possibly additional

4 105. On the issue of territoriality, QAD specifically alleges in the Complaint  
5 (Exhibit B, Tab-1, ¶3 @ p.2, lines 18-22), that “SUBRAMANIAN ... makes, and at  
6 various and several times relevant to the matters set forth in this action has made,  
7 repeated trips to the State of California in connection with the matters set forth herein and  
8 for other purposes. Vedatech Inc. is a Washington State Corporation that is accused of  
9 undertaking these action. Thus, the matter is one of actions, including those for copyright  
10 infringement undertaken within the U.S., which is actionable in the District Court here.

11 106. In fact, the fact that QAD in its papers submitted on April 26-27, 2004  
12 argues for the “extraterritoriality” exception for Copyright infringement is in and of itself  
13 conclusive trigger for complete preemption since QAD is acknowledging for the first  
14 time that there is copyright infringement alleged, but wishes to take advantage  
15 (incorrectly and improperly) of the exception where the infringement took place entirely  
16 outside the United States. Thus, this, in and of itself should permit proper removal  
17 jurisdiction. These allegations regarding “extra-territoriality” of copyright infringement  
18 etc., were not made before March 15, 2004.

19 107. In addition, the actual work done by Vedatech was predominantly in  
20 Japan, as the interrogatory responses clearly state. (See e.g. Exhibit E, Tab-1.2, p.29.)  
21 On the other hand, it is clearly alleged that QAD Inc. is a corporation headquartered in  
22 Carpinteria, California. Thus, the copyrights in the original MFG/PRO software are  
23 those arising under the U.S. laws. The copyright that QAD is disputing is in the  
24 Localizations / Japanizations and translations of this original software, and to which  
25 Vedatech K.K. claims “ownership”, (Complaint, para.21(L)), arise under Japanese  
26 copyright law, as now affirmatively confirmed in the allegations and information  
27 provided by Mr Connell in the April 26-27 motion papers / memoranda. The  
28

1 infringement or other actions predicated on infringement are alleged to have been by a  
2 Washington State corporation operating in the U.S. and Subramanian alleged to have  
3 traveled to California frequently. The infringement by QAD of the Japanese copyrights  
4 of Vedatech happened in California (as now newly alleged by QAD regarding Thus, the  
5 provisions of the Berne Convention, and its interpretation and construction also will play  
6 a prominent role in being able to resolve QAD's claims in their Complaint.

7 108. This (i.e., the need to interpret a treaty) is an independent reason for this  
8 Court to have original subject matter jurisdiction, since under 28 U.S.C. 1331, a federal  
9 question arises when there is an action, such as herein, "arising under" the "treaties of the  
10 United States". [Berne Convention.]

11 109. Another issue, that relates to the "complete preemption" doctrine which  
12 operates against the usual presumption of no federal jurisdiction on the basis of a federal  
13 defense is that Vedatech parties potentially have copyright infringement claims against  
14 QAD (especially if they prevail on the question of copyright "ownership" under work-  
15 for-hire doctrine, in spite of it, or otherwise.) It is clear that Vedatech has authorship of  
16 the Localizations and translations because QAD admits in its interrogatories (as detailed  
17 above) that Vedatech performed these tasks and now admits that there was no written  
18 contract regarding the transfer of such rights. Any kind of agreement regarding this  
19 matter is strictly governed by the "work for hire" doctrine of the Copyright Act.

20  
21 **ATTEMPTS TO GET INFORMATION /DETAILS FROM QAD THROUGH**  
22 **DOCUMENT REQUESTS**

23 110. Exhibit F collects the various requests by Vedatech parties to get proper  
24 document discovery from QAD. It is clear from QAD's stonewalling that QAD has  
25 refused to provide proper discovery and has been fraudulently concealing information  
26 regarding its actions related to copyrights. For example, in Exhibit F, Tab-2, p.47, [Bates  
27 No.904], the email darkly hints about QAD personnel being involved in "reverse  
28 engineering" and trying to remove Vedatech "labels" from some unspecified "code".

1 Whereas the indication is that this was done by QAD-Australia (which is an Australian  
2 company and a subsidiary of QAD Inc.), the role of QAD Inc. is not clear. In addition,  
3 although the infringement would seem to be overseas, it is quite possible that QAD Inc.  
4 participated in the infringement from its headquarters in California and/or is otherwise  
5 vicariously liable for the same. Vedatech parties have been trying to get further  
6 information in order to formulate their own “counterclaims” for copyright infringement  
7 for a long time, with very little success. As can be seen from the responses in Exhibit F,  
8 even simple email archives have not been provided and it is very difficult for Vedatech to  
9 progress its case. Now, for the first time in its April 26-27, 2004 papers, QAD clearly  
10 and officially alleges and confirms that it has developed new software on the subject of  
11 localizations after engaging in such “reengineering” of Vedatech software.

12 111. If proper discovery can be obtained from QAD, Vedatech in all likelihood  
13 will have counterclaims for copyright infringement (in addition to the federal defenses  
14 based on the work-for-hire doctrine in 17 U.S.C. §§ 101, 201 etc.) Such counterclaims  
15 themselves would have to be asserted through the provisions of the Berne Convention,  
16 and this Court will have exclusive subject matter jurisdiction over these issues.

17 112. QAD Inc.’s only business is to develop and sell software (Complaint,  
18 Exhibit B, Tab-1, ¶ 7 @ p.4, lines 6-12.) Vedatech’s main role was adapting such  
19 software to the Japanese market. Copyrights to such software is the key factor in  
20 determining the share of the profits to be made by each party in such a market. The core  
21 dispute between the parties relates to copyrights. This completely preempts other state  
22 law claims, and this Court has subject matter jurisdiction over the entire action.

23 113. In its April 26-27, 2004 papers, QAD puts forth in great detail various  
24 false, scandalous allegations regarding Vedatech parties. The doctrine of complete  
25 preemption is not defeated by the presence of any volume of such claims. Apart from the  
26 prejudicial and poison-the-well nature of such allegations, such allegations do not detract  
27 from the clear federal question raised by the remaining allegations and clarifications.  
28

1  
2 **ACTION IS REMOVABLE PURSUANT TO §§1331, 1338, 1441 &1446**

3 114. This is a civil action over which this court has original jurisdiction  
4 pursuant to 28 U.S.C. §§ 1331 and 1338 and which has become removable pursuant to  
5 28 U.S.C. § 1441 et seq. in that certain of the claims alleged in the action arise under the  
6 Federal Copyright Act, 17 U.S.C. § 101 et seq., § 501, et seq. and under the Berne  
7 Convention. This court to the extent necessary also has jurisdiction over any state law  
8 claims that are not completely preempted under 28 U.S.C. § 1367 or 28 U.S.C § 1441(c).

9 **JURISDICTIONAL STATEMENT PURSUANT TO LOCAL RULE 3-5(a)**

10 115. The federal courts have exclusive jurisdiction to hear and decide copyright  
11 disputes. 28 U.S.C. § 1338. See also 28 U.S.C. § 1331, granting jurisdiction to hear  
12 cases arising under the Constitution, laws or treaties of the United States.

13 116. 17 U.S.C. § 101 defines "work for hire as follows:  
14

15 A "'work made for hire'" is -

16 (1) a work prepared by an employee within the  
17 scope of his or her employment; or

18 (2) a work specially ordered or commissioned for  
19 use as a contribution to a collective work,  
20 [...], as a translation, as a supplementary work,  
21 as a compilation, as an instructional text, as a  
22 test, as answer material for a test, [...], **if**  
23 **the parties expressly agree in a written**  
24 **instrument signed by them that the work shall be**  
25 **considered a work made for hire.** For the purpose  
26 of the foregoing sentence, a "'supplementary  
27 work'" is a work prepared for publication as a  
28 secondary adjunct to a work by another author for  
the purpose of introducing, concluding,  
illustrating, explaining, revising, commenting

1       upon, or assisting in the use of the other work,  
2       such as forewords, afterwords, pictorial  
3       illustrations, maps, charts, tables, editorial  
4       notes, musical arrangements, answer material for  
5       tests, bibliographies, appendixes, and indexes,  
6       and an ''instructional text'' is a literary,  
7       pictorial, or graphic work prepared for  
8       publication and with the purpose of use in  
9       systematic instructional activities.

10       117. QAD, in its recent interrogatory response, for the first time clarifies its  
11       pleadings to claim that it has copyrights to the “localized” software developed by  
12       VEDATECH, and that it has “ownership” of such copyright because of the “work for  
13       hire” doctrine. It is clear from the detailed allegations of the contractual relationship  
14       between the parties, and especially the confirmation and allegations made in the April 26-  
15       27, 2004 papers submitted by QAD, (i.e. Exhibit A of QAD’s Complaint itself, and the  
16       allegations of oral extensions and subsequent alleged cancellation, allegedly evidenced  
17       by Exhibit B of the Complaint itself), THAT there was NO written instrument expressly  
18       agreed to between the parties. QAD now confirms this conclusively in its April 26-27,  
19       2004 motion papers. Notwithstanding the same, QAD makes claims to copyrights in  
20       such localization works by virtue of the fact that it “commissioned” work to Vedatech  
21       Parties. There is an additional question as to whether the translation or any  
22       “supplemental work” is covered by the “work for hire” doctrine. Without any claims for  
23       copyright, the issues regarding “commissioning” may not fall within the ambit of the  
24       Copyright Act. But with specific relief sought by QAD on the basis that (a) it does own  
25       copyrights to the localized software and that (b) such a copyright arises out of the “work  
26       for hire” doctrine, involves the construction, interpretation and judgment on the possible  
27       remedies provided under the Copyright Act and the provisions of 17 U.S.C. §§ 101 et  
28       seq. In addition, the new clarifications provided by QAD in its April 26-27, 2004 motion

1 papers and memoranda confirm the need for the interpretation and construction of the  
2 Berne Convention, and reveal for the first time the fact that Vedatech parties have  
3 copyright infringement against QAD Inc. for developing “new software” on the  
4 localization based on the “reengineering” undertaken by its Australian subsidiary.

5 118. Further provisions regarding “work for hire” is provided for in 17 U.S.C §  
6 201 (b), which states that:

7  
8 (b) Works Made for Hire. -

9 In the case of a work made for hire, the employer  
10 or other person for whom the work was prepared is  
11 considered the author for purposes of this title,  
12 and, unless the parties have expressly agreed  
13 otherwise in a written instrument signed by them,  
14 owns all of the rights comprised in the  
copyright.

15 119. It is clear from the March 11, 2004 interrogatory responses and the further  
16 clarifications provided in the April 26-27 motion papers and memoranda, that QAD is  
17 claiming that it is in the position of an “other person for whom the work was prepared”.  
18 Thus, the nature of the contractual relationship between the parties and the construction  
19 of this statute also becomes relevant for the resolution of QAD’s claims against the  
20 Vedatech parties. It is Vedatech Parties’ contention that QAD is mistaken because 17  
21 U.S.C §201(a) is dependent on a work being considered to be a “work for hire” per the  
22 definition in 17 U.S.C. §101. This dispute will involve an interpretation of the  
23 construction and meaning of the Copyright Act and the provisions of 17 U.S.C.

24 120. If the copyright in the “localizations” and other translation work  
25 undertaken by Defendants were to vest in Vedatech Parties as per § 201 (a), then the  
26 issues of transfer of ownership under § 201 (d) or otherwise are also are in dispute. There  
27 are numerous other issues that come up in the dispute involving copyright, such as what  
28

1 portions of the work undertaken by Vedatech would be considered as a “joint work” and  
2 what are “derivative works” under 17 U.S.C. § 101, all of which are in dispute and would  
3 have to be resolved before any relief can be granted to QAD as pleaded in its  
4 Complaint.<sup>11</sup>

5 121. §501 defines “copyright infringement as violation of any of the rights  
6 enumerated in §§ 101 through 121. One other way of characterizing QAD’s claims in ¶¶  
7 21 (L) and (H)-(K) of the Complaint is that QAD wishes to state various state law claims  
8 on the basis that in addition to VEDATECH’s assertions themselves being infringement  
9 of QAD’s copyrights, the fact that VEDATECH allegedly asserted to customers and  
10 third-parties that *QAD was violating Vedatech’s copyrights* is actionable under these state  
11 law causes of action. In other words, it has become clear that QAD essentially claims  
12 that it was improper for VEDATECH to assert that VEDATECH had copyrights to the  
13 *“localized” software*. Especially the Trade Libel cause of action will turn upon the truth  
14 of this statement, and the truth will depend on VEDATECH’s rights under the Copyright  
15 Act / 17 U.S.C §§ 101 seq.” Accusing Vedatech of “improperly asserting ownership” to  
16 copyrights is the same as saying that Vedatech was improperly accusing QAD of  
17 copyright infringement.

18 122. The resolution of QAD’s claims thus require the interpretation and  
19 construction of the provisions of 17 U.S.C §§501 et seq. regarding copyright  
20 infringement also. Did or did not Vedatech’s alleged assertions regarding copyright have  
21 a valid basis in truth? [Since “truth” is a proper defense to any state law action for “Trade  
22 libel”.] The doctrine of complete preemption is sufficient to provide federal jurisdiction.  
23  
24

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25 <sup>11</sup> QAD, in collusion with Vedatech’s insurers St.Paul, has been taking various  
26 actions AFTER the removal to Federal Court in order to try to defeat Federal Jurisdiction.  
27 The issue of subject matter jurisdiction is determined as of the time of removal, viz., on  
28 March 15, 2004 and cannot be taken away by QAD by manipulative tactics since then.

1           123. Thus, some or all of the causes of action mask a copyright infringement  
2 action as a state law cause of action and others (such as Trade Libel) additionally involve  
3 elements of defense that in any event result in complete preemption of the cause of  
4 action. See 28 U.S.C. § 1338.

5           124. In addition, as detailed above, resolution of QAD's claims also require the  
6 interpretation of, and application of the Berne Convention, which is a multinational treaty  
7 to which the United States is a party. Under 28 U.S.C. 1331, this clearly results in  
8 QAD's claims "arising out" of treaties. Such treaties, in any event, under the  
9 Constitution become the "supreme law" of the United States. State law claims that  
10 necessarily sound in copyright are preempted by federal copyright law and may be  
11 removed on that basis. Here, QAD's claims are necessarily predicated on QAD's claim  
12 to own the copyright in and to certain software or source code and that defendants  
13 harmed its copyright ownership interests by improperly claiming copyright or ownership  
14 of the same software or source code. Copyright interests in software and source code are  
15 clearly within the subject matter of copyright. QAD essentially seeks to "quiet title" in  
16 and to its asserted copyright interest in the software and source code. Accordingly, QAD  
17 is seeking to use state law causes of action to establish and protect rights that are  
18 qualitatively equivalent to copyright.

19  
20 **INTRA-DISTRICT ASSIGNMENT STATEMENT, LR 3-5(b)**

21           125. This Action was currently pending in California Superior Court for Santa  
22 Clara County, and after the recent remand is again pending in the same Court.

23           126. The removal statute provides that when a case is removed to federal court,  
24 the defendant "shall file in the district court of the United States for the district **and**  
25 **division** within which such action is pending a notice of removal..." 28 U.S.C. §  
26 1446(a) (emphasis added). This action is pending in Santa Clara County Superior Court  
27 which is within the San Jose Division of the Northern District of California. LR 3-2(e).



## **NOTICE OF REMOVAL IS TIMELY FILED**

127. Defendants hereby file this Notice of Removal within thirty (30) days of the date when they first received any process, pleading or other paper from which it could be first and unequivocally ascertained that the case is or had become removable.

Alternatively, QAD has waived any objection it has to the 30-day procedural requirement by requesting substantive relief from the Federal Court in the form of dismissals etc. in its “preliminary response” during the prior removal to Federal Court.

### **Joinder of All Defendants**

128. ALL Defendants in the main action being removed, CV 771638, (i.e. Vedatech Inc. and Subramanian) and the additional true defendants of the Consolidated Action, CV 784685 (i.e. Vedatech K.K., in addition to Subramanian and Vedatech Inc.,) join this Notice of Removal. Thus, the counterdefendants in the consolidated action also join in this Notice of Removal. Since the main action being removed, CV 771638 is the original and earlier filed action, and CV 784685 was later consolidated *into* the first action, the original (third-party) defendants have not been requested to join in the removal. It should be noted though that QAD Japan Inc., a defendant in CV 784685 originally removed the second consolidated case to this same District Court.

### **A question of Delay**

129. In their various inflammatory allegations in the papers filed on April 26-27, 2004, QAD and its counsel Mr William Connell accuse removing parties of intending to cause delay and stress the fact that a previous May 2004 trial date in State Court was lost. The real reason for the cumulative delay to-date in these proceedings can be gleaned from a simple survey of the answers to the latest interrogatories propounded by removing parties and answered by QAD on March 10, 2004 (received on March 11, 2004, Exhibit

1 E, Tab-9.1): the real reasons are QAD's refusal to provide any meaningful discovery and  
2 its incredible stonewalling and insincere responses.

3 130. Apart from having completely ignored the Magistrate Judge's discovery  
4 deadline in Oct 1999 when the lead case was venued in Federal Court, QAD to this day  
5 refuses to provide basic email archives. In the March 10, 2004 interrogatory responses,  
6 QAD states at Exhibit-E, Tab-9.1, p.2, para.2., as a general objection to all questions,  
7 incredibly that "*QAD notes that it has not fully completed its investigation and discovery*  
8 *of the facts relating to the case and has not completed all preparation for trial.*" QAD  
9 has made detailed allegations about issues relating to intellectual property and has itself  
10 produced documentary evidence about the "reengineering" of Vedatech developed  
11 software by QAD's Australian subsidiary.

12 131. In spite of this QAD claims in its March 10, 2004 responses that Vedatech  
13 parties have "*not provided QAD with access to said INTELLECTUAL PROPERTIES. ...*  
14 *... However, QAD is unable to respond to the specific requests for information contained*  
15 *in this Interrogatory by virtue of the fact that neither Mr Subramanian nor Vedatech*  
16 *provided copies of the subject properties to QAD despite repeated requests for it.*" This  
17 is an outright misrepresentation, as we know that QAD had access to Vedatech software  
18 because it was discussing "reengineering" of the same including whether to delete  
19 "labels" within such software, with its Australian subsidiary.

20 132. It is clear that the parties were not ready for trial, nor are ready for trial  
21 because of QAD's continuing refusal, and consequently will not be ready for trial in any  
22 time soon. QAD's desire in rushing to trial is to make sure that Vedatech parties have no  
23 chance of proving their affirmative claims or being able to prove their innocence. The  
24 extremely prejudicial and false and scandalous additional "details" and "facts" and  
25 "background" that QAD provides in its April 26-27 papers also illustrate the hollow  
26 nature of QAD's fully "executed" "settlement agreement" with St.Paul, the insurer for  
27 Vedatech parties. If the agreement is truly fully executed and signed in good faith, QAD  
28

1 would desist from making inflammatory and false statements that it has apparently settled  
2 for a payment of money from the insurer, whose main motivation is to avoid defense  
3 costs and weaken Vedatech's legal resources to pursue the Vedatech parties' bad faith  
4 claims against the insurer (St.Paul) for, *inter alia*, non-payment of past defense costs.  
5

### 6 **Issues regarding an "extra element"**

7 133. In fact, under the doctrine of complete preemption, as noted above, it is  
8 not relevant that there are alternate routes based on other allegations to proving or  
9 establishing a state law cause of action. Furthermore, QAD claims that the cause of  
10 action for fraud, for example can never be preempted, quoting a general section of  
11 Nimmer on Copyrights.

12 134. Further study of Nimmer and the authorities show that this is not true and  
13 this general statement is qualified in many ways. In cases, such as herein, where the  
14 misrepresentation itself is related to an act forbidden by the Copyright Act, and other  
15 cases where the misrepresentations themselves are sounding in infringement, the  
16 "misrepresentation" no longer is the "extra element" that is needed to prevent a complete  
17 preemption. Thus, the authorities concede and in fact clearly establish that fraud can be  
18 preempted by the Copyright Act in cases similar to this one.

19 135. Each and every one of the causes of action alleged herein have been found  
20 to be capable of complete preemption. Furthermore, contrary to QAD's claims in the  
21 motion papers of April 26-27, 2004, the "extra element" is NOT the presence of other  
22 allegations, or an infinity of scandalous and horrible sounding false accusations that may  
23 reach the same state law causes of action.<sup>12</sup> The "extra element" has to do with the actual

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24 <sup>12</sup> In his enthusiasm to show how many other issues there are in the Complaint other  
25 than copyright issues, Mr William Connell, counsel for QAD goes overboard in  
26 embellishing and detailing (in much more detail than is to be found in any of the previous  
27 allegations in the Complaint or the interrogatory responses) various scandalous  
28 allegations for which he has been refusing to provide simple support by releasing his  
email archives. In fact, if even *a fraction* of such claims were true, QAD would have

1 legal elements that constitute, under State Law, such a cause of action for, say, breach of  
2 fiduciary duty, and further its interplay with the Copyright related actions alleged by  
3 QAD. Each cause of action in QAD's claims, individually satisfy this test for complete  
4 preemption. To the extent that any one of them do not, then they are removable under the  
5 provisions of 28 U.S.C. §1367 or §1441(c).

## 6 **Reasons for Removal / Motivation of Removing Parties**

7  
8 136. Vedatech parties believe that the original complaint is "artfully pleaded"  
9 to obfuscate QAD's true intention of claiming copyrights in the localized (Japanized)  
10 software that was developed by Vedatech and in other copyrightable material (such as  
11 translations) that was developed by Vedatech. From the first interrogatories that were  
12 served in Federal Court in June/July 1999, Vedatech parties have attempted to ascertain  
13 the true nature of QAD's complaint and the issues surrounding claims regarding  
14 "intellectual property" and the issues of "ownership" regarding the same.

15 137. Vedatech parties also believed that they may have claims for copyright  
16 infringement against, at a minimum, agents or subsidiaries of QAD Inc., but also QAD  
17 Inc., itself. Efforts to get discovery regarding this over the last several years have also  
18 consistently failed, as QAD, in violation of Magistrate Judge Patricia Trumbull's order in  
19 Oct 1999 and since then, has stonewalled and refused to provide basic information such  
20 as email archives and names of their CGL insurance carrier.

21 138. It is in this context that when the interrogatory responses detailing QAD's  
22 true purpose in alleging matters regarding its "intellectual property", clarified that the real  
23 issue was about copyrights-based claims, Vedatech parties promptly removed the  
24 consolidated action.

25  
26 rushed to produce all of its email archives and been ready to prove these one way or  
27 another. Instead, QAD is apparently ready for trial, but not ready to produce its email  
28 archives, or for that matter the name of its CGL (Commercial General Liability) insurer.

1           139. If, as Vedatech parties now believe, one possible reading of the prior  
2 remand order dated April 29, 2004, is that the answer of March 10, 2004 (received on  
3 March 11, 2004), even taken together with the original complaint and the subsequent  
4 interrogatory responses is not sufficient to raise a federal question [Remand Order at  
5 Exhibit H, Tab-19, Line-1], and that the prior removal was untimely to the extent that it  
6 was premature, then Vedatech parties believe that the detailed NEW and further  
7 allegations and affirmative claims that QAD has made through its motions / briefs /  
8 memoranda and material submitted after March 15, 2004, and in the April 26-27, 2004  
9 period provide a firm basis for supporting the various logical conclusions Vedatech  
10 parties sought to derive from the March 11, 2004 revelation regarding “copyrights”.

11           140. It is Vedatech parties’ intent that ALL issues between the parties be  
12 resolved in a single forum and that that would constitute the most judicially efficient path  
13 to take. The copyright infringement counterclaims of Vedatech, the viability of which is  
14 now confirmed by QAD’s new revelations that it actually developed new localized  
15 software after the “reengineering” attempts of its Australian subsidiary, can now be  
16 properly heard along with the removed claims.

17           141. Unlike the first time around, there is no trial date set now that is being  
18 upset. On March 25, 2004, QAD has purported to enter into a “settlement” with St.Paul,  
19 the insurers of removing parties and has been attempting to defeat federal jurisdiction by  
20 trying to dismiss its claims. Vedatech parties have challenged this “settlement” in an  
21 original action in Federal Court now on the docket as C-04-01249 VRW.

22           142. Vedatech parties believe that the motivating factors for this “settlement”  
23 have to do with secret collusion between QAD and St.Paul in trying to weaken  
24 Vedatech’s legal position and defeat federal jurisdiction and try to rush through an early  
25 trial in the QAD case so that there is no time for Vedatech parties to compel QAD to  
26 produce its email archives or even basic information such as the name of QAD’s CGL  
27 (Commercial General Liability) carrier.  
28

1           143. St.Paul is trying to leverage this event to gain an advantage in the bad faith  
2 action that Vedatech parties initiated as a cross-complaint to St.Paul's declaratory relief  
3 action started by St.Paul in February 2002. This insurance action is currently removed to  
4 Federal Court under C-04-01403 SC and noticed as a related case to C-04-01249 VRW.

5           144. Vedatech parties believe they will soon be able to file a motion for leave  
6 to amend their counterclaims to include copyright infringement claims based on new  
7 information revealed by QAD (through its counsel Mr William Connell) in their April  
8 26-27, 2004 motions, briefs, memoranda and other papers and any additional discovery if  
9 necessary.

10           145. All of the events underlying such copyright infringement actions form the  
11 same case or controversy under Art.III of the United States Constitution along with this  
12 removed consolidated case. It is in the interests of fairness and justice that all of this be  
13 heard together given that removal jurisdiction is proper.<sup>13</sup>

14  
15  
16 **DEMAND FOR JURY TRIAL**

17           146. To the extent necessary, Defendants now again demand that this  
18 consolidated action be tried to a jury as provided by Fed.R.Civ.P. 38(b).

19  
20 ///

21  
22 <sup>13</sup> On the other hand, QAD parties and Mr William Connell, counsel for QAD  
23 parties, clearly see an advantage in withholding basic information such as email archives,  
24 and in depending on collusive agreements with St.Paul, the insurer, to weaken Vedatech  
25 in parallel by withholding fee reimbursements etc., in dismissing their affirmative claims  
26 so that St.Paul can have an excuse not to pay for any defense costs, and in relying upon  
27 the current State forum to push through an early trial under such circumstances. QAD's  
28 misguided and improper enthusiasm for the State forum because of their belief that such a  
plan could be rushed through the current State forum is no reason to entertain any  
objections to the removal or cast any doubts about the sincerity of the removal.

1  
2 Dated: May 4, 2004  
3

LAW OFFICES OF JAMES S. KNOPF

4 By \_\_\_\_\_  
5 CHRISTINA GONZAGA  
6 Attorneys for  
7 VEDATECH INC. AND VEDATECH K.K.  
8

9 Dated: May 4, 2004

10 By \_\_\_\_\_  
11 MANI S. SUBRAMANIAN  
12 PRO SE.  
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